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AN

HISTORICAL VIEW

OF THE

ENGLISH GOVERNMENT.

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HISTORICAL VIEW

OF THE

ENGLISH GOVERNMENT,

FROM THE

SETTLEMENT OF THE SAXONS IN BRITAIN

TO

THE REVOLUTION IN 1688.

To which are subjoined,

SOME DISSERTATIONS CONNECTED WITH THE HISTORY OF THE GOVERNMENT,

From the Revolution to the Present Time

BY JOHN MILLAR ESQ.

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IN FOUR VOLUMES.

VOL. I.

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ADVERTISEMENT.

THE Friends of Mr. Millar to whom he entruſted his Manuſcripts, think they would be wanting in their duty, were they not to publiſh the following continuation of his Hiſtorical View of the Engliſh Government.

It was the intention of the Author, as will be ſeen in the following pages, to divide the hiſtory from the Acceſſion of the Houſe of Stewart, to the preſent time, into two periods: the firſt comprehending the hiſtory of thoſe conteſts between Prerogative and Privilege, which, by the Revolution in 1688, *terminated in a manner ſo honourable to the ſpirit of the nation, and ſo advantageous to the happineſs and liberties of the people: the ſecond containing the hiſtory of the riſe and progreſs of the Influence of the Crown: an influence, which, though in ſome meaſure checked by the general diffuſion of knowledge and the advancement of the arts, was likely, in the opinion of the Author, to become the more dangerous to the conſtitution, as its ſlow and inſenſible advances are leſs apt to excite attention.*

Of theſe two parts of the general deſign, the

firſt was left by the Author, in the ſtate in which he apparently meant to give it to the public, and in which it now appears.—Great part of the materials for the hiſtory of the ſecond period, as well as for an account of the preſent ſtate of the Engliſh Government, had alſo been collected, and partly arranged by him: but conſiderable alterations on the manuſcripts would be requiſite, before theſe very important parts of the work could be offered to the public.

There were found, however, among Mr. Millar's papers ſeveral diſſertations on ſubjects connected with the later hiſtory of the Government, Manners, and Literature of England, the ſubſtance of which it would appear he had intended to introduce into his work; theſe diſſertations ſeem to contain ſo many ingenious and intereſting ſpeculations, that it has been judged proper to make them public, notwithſtanding the unfiniſhed ſtate of the concluding Eſſay.

College, Glaſgow
14th March, 1803.

TO THE

RIGHT HONOURABLE

CHARLES JAMES FOX.

SIR,

I SHALL, perhaps, be thought guilty of preſumption, in wiſhing to draw your attention to the following publication. The truth is, it appears to me ſcarcely poſſible for any man to write a conſtitutional hiſtory of England, without having Mr. Fox almoſt conſtantly in his thoughts.

In delineating the progreſs of the Engliſh government, I have endeavoured to avoid thoſe fond prepoſſeſ-

ſions which Engliſhmen are apt to entertain upon the ſubject, as well as the prejudices peculiar to the two great parties, which the nature of our limited monarchy has produced. How far I have ſucceeded in this, muſt be left to the judgment of the public. But, whatever indulgence may be ſhewn to this work, the ambition of its author will not be gratified; unleſs he can procure in ſome degree, the approbation of a mind ſuperior to prejudice; equally capable of ſpeculation, and of active exertion; no leſs converſant in elegant literature, than accuſtomed to animate the great ſcenes of national buſineſs; poſſeſſed of the penetration to diſcover the genuine principles of the conſtitution, and of the virtue to make them an invariable rule of conduct.

Impreſſed

Impreſſed with the higheſt eſteem for ſuch a character, permit me to declare the ſatisfaction I feel from your ſteady perſeverance in a ſyſtem, which, by tending to ſecure the natural rights of mankind, has led to a reputation the moſt exalted, and the moſt grateful to a generous mind.

I have the honour to be,

SIR,

Your moſt obedient

Humble ſervant,

JOHN MILLAR.

College, Glasgow,
4th Dec. 1786.

INTRODUCTION.

THE great ſeries of events in the hiſtory of England may be divided into three parts: the firſt, extending from the ſettlement of the Saxons in Britain to the Norman conqueſt; the ſecond, from the reign of William the Conqueror to the acceſſion of the houſe of Stewart; the third, from the reign of James the Firſt to the preſent time. The important changes exhibited in the ſtate of the country, and in the ſituation of its inhabitants, appear, like a ſort of natural boundaries, to mark out theſe different periods, and to recommend them as objects of diſtinct and ſeparate examination.

The firſt period contains the conqueſt of England by the northern barbarians, the diviſion of the country under the different chiefs by whom that people were conducted, the ſubſequent union of thoſe principalities under one ſovereign, and the courſe of public tranſactions under the Saxon and Daniſh monarchs.

The reign of William the Conqueror, while

it put an end to the ancient line of kings, introduced into England a multitude of foreigners, who obtained extenſive landed poſſeſſions, and ſpread with great rapidity the manners and cuſtoms of a nation more civilized and improved than the Engliſh. The inhabitants were thus excited to a quicker advancement in the common arts of life, at the ſame time that the nation, by acquiring continental connections, was involved in more extenſive military operations.

By the union of the crowns of England and Scotland, upon the acceſſion of the houſe of Stewart, the animoſities and diſſenſions, with all their troubleſome conſequences, which had ſo long ſubſiſted between the two countries, were effectually ſuppreſſed. By the improvement of manufactures, and the introduction of a conſiderable foreign trade, England began, in a ſhort time, to eſtabliſh her maritime power, and to aſſume a higher rank in the ſcale of Europe.

The ſame periods are alſo diſtinguiſhed by remarkable variations in the form of government.

Upon the ſettlement of the Saxons in Britain,

tain, we behold a number of rude families or tribes feebly united together, and little accuſtomed either to ſubordination among themſelves, or to the authority of a monarch. During the reigns of the Anglo-Saxon princes, we diſcover the effects produced by the gradual acquiſition of property; in conſequence of which ſome individuals were advanced to the poſſeſſion of great eſtates, and others, who had been leſs fortunate, were obliged to ſhelter themſelves under the protection of their more opulent neighbours. Political power, the uſual attendant of property, was thus gradually accumulated in the hands of a few great leaders, or nobles; and the government became more and more ariſtocratical.

When the advances of the country in improvement had opened a wider intercourſe, and produced a more intimate union, between the different parts of the kingdom, the accumulated property in the hands of the king became the ſource of greater influence than the divided property poſſeſſed by the nobles. The prerogatives of the former, in a courſe of time, were therefore gradually augmented; and the privileges of the latter ſuffered a pro-

portionable diminution. From the reign of William the Conqueror in England, we may date the firſt exaltation of the crown, which, under his ſucceſſors of the Plantagenet and Tudor families, continued to riſe in ſplendor and authority.

About the commencement of the reign of James the Firſt, great alterations began to appear in the political ſtate of the nation. Commerce and manufactures, by diffuſing a ſpirit of liberty among the great body of the people, by changing the ſyſtem of national defence, and by increaſing the neceſſary expences of government, gave riſe to thoſe diſputes, which, after various turns of fortune, were at laſt happily terminated by the eſtabliſhment of a popular government.

With reference to that diſtribution of property, in the early part of our hiſtory, which goes under the name of the feudal ſyſtem, the conſtitution eſtabliſhed in the firſt of theſe periods, may be called the *feudal ariſtocracy*; that in the ſecond, the *feudal monarchy*; and that which took place in the third, may be called the *commercial government*.

Similar periods to thoſe which have now been

been pointed out in the Engliſh hiſtory, may alſo be diſtinguiſhed in the hiſtory of all thoſe kingdoms on the continent of Europe, which were eſtabliſhed upon the ruins of the Roman Empire, and in which the people have ſince become opulent and poliſhed. Thus the reign of Hugh Capet in France, and of Otho the Great in Germany, correſpond to that of William the Conqueror in England; as thoſe of Lewis XIII. and Ferdinand II. in the two former countries, were analogous to that of James the Firſt, in the latter.

In the following treatiſe, it is propoſed to take a ſeparate view of theſe periods of the Engliſh hiſtory, and to examine the chief differences of the political ſyſtem in each of them. As the government which we enjoy at preſent has not been formed at once, but has grown to maturity in a courſe of ages, it is neceſſary, in order to have a full view of the circumſtances from which it has proceeded, that we ſhould ſurvey with attention the ſucceſſive changes through which it has paſſed. In a diſquiſition of this nature, it is hoped that, by conſidering events in the order in which they happened, the cauſes of every change will be

more eaſily unfolded, and may be pointed out with greater ſimplicity. As the ſubject, however, is of great extent, I ſhall endeavour to avoid prolixity, either from quoting authorities and adducing proofs in matters ſufficiently evident, or from intermixing any detail of facts not intimately connected with the hiſtory of our conſtitution.

With reſpect to the Saxon period, which comes firſt in order, many writers appear to have looked upon it as too remote, and as affording a proſpect too barren and rude, to deſerve any particular examination. But it ought to be conſidered, that the foundations of our preſent conſtitution were laid in that early period; and that, without examining the principles upon which it is founded, we cannot form a juſt opinion concerning the nature of the ſuperſtructure. To trace the origin of a ſyſtem ſo ſingular in its nature may, at the ſame time, be regarded as an object of rational curioſity. The Britiſh government is the only one in the annals of mankind that has aimed at the diffuſion of liberty through a multitude of people, ſpread over a wide extent of territory. The ancient republics of Greece and Rome

Rome comprehended little more than the police of a ſingle city; and in theſe a great proportion of the people, ſo far from being admitted to a ſhare in the government, were, by the inſtitution of domeſtic ſlavery, excluded from the common rights of men. The modern republics of Italy, not to mention the very unequal privileges which they beſtow upon different individuals, are inconſiderable in their extent. The ſame obſervation is applicable to the government of the Swiſs cantons. In the Seven United Provinces of the Netherlands, the government can hardly be conſidered as more extenſive; for, notwithſtanding the confederacy by which they are connected, every particular province, and even every ſingle town of any conſequence, belonging to each, having the excluſive power of making or conſenting to its own regulations, forms in reality an independent political ſyſtem. By what fortunate concurrence of events has a more extenſive plan of civil freedom been eſtabliſhed in this iſland? Was it by accident, or by deſign, or from the influence of peculiar ſituation, that our Saxon foreſathers, originally diſtinguiſhed as the moſt ferocious

of all thoſe barbarians who invaded the Roman provinces, have been enabled to embrace more comprehenſive notions of liberty, and to ſow the ſeeds of thoſe political inſtitutions which have been productive of ſuch proſperity and happineſs to a great and populous empire? To theſe queſtions it is hoped that, in the ſequel, a ſatisfactory anſwer will be given.

AN

HISTORICAL VIEW

OF THE

ENGLISH GOVERNMENT.

BOOK I.

OF THE ENGLISH GOVERNMENT, FROM THE SETTLEMENT OF THE SAXONS IN BRITAIN TO THE REIGN OF WILLIAM THE CONQUEROR.

CHAPTER I.

Preliminary Account of the State of Britain under the Dominion of the Romans.

THE downfal of the Roman ſtate, and the formation of thoſe kingdoms which were built upon the ruins of it, may be regarded as one of the greateſt revolutions in the hiſtory of mankind. A vaſt unwieldly empire, which had for ages languiſhed under a gloomy deſpotiſm, was then broken into a number of independent ſtates, animated with all the vigour,

gour, but ſubjected to all the violence and diſorder, natural to a riſing and unſettled conſtitution. The arts and literature which had grown up in the ancient world were, in a great meaſure, overthrown; and a new ſyſtem of political inſtitutions, together with a total change of manners, cuſtoms, and ways of thinking, ſpread itſelf over the greateſt part of Europe.

The plan of government, which the Romans adopted throughout the greateſt part of their dominions, was uniform and ſimple. After that people had enlarged their city, as far as was convenient, by incorporating ſome of the neighbouring tribes, and had joined to it the poſſeſſion of a conſiderable adjacent territory, they divided their future acquiſitions into diſtinct provinces; in each of which they placed a governor, inveſted with almoſt unlimited authority. It cannot eſcape obſervation, that the Roman patriotiſm, even in the boaſted times of the commonwealth, was far from being directed by a liberal ſpirit: it proceeded from narrow and partial conſiderations; and the ſame people who diſcovered ſo much fortitude and zeal in eſtabliſhing and maintaining the

the freedom of their capital, made no ſcruple in ſubjecting the reſt of their dominions to an arbitrary and deſpotical government. The governor of every province had uſually the command of the forces; and was inveſted with the ſupreme executive and judicial powers, together with the privilege of appointing the greateſt part of the inferior officers, to whom the diſtribution of juſtice, or the care of the police, was intruſted. The oppreſſive taxes to which the inhabitants of the provinces were ſubjected, and the ſtill greater oppreſſion which they ſuffered from the arbitrary and illegal exactions of their magiſtrates are ſufficiently known. The tribunals of Rome were at too great a diſtance to take a ſtrict account of her provincial officers; and the leading men in the Republic, who expected, in their turns, to enrich themſelves by the plunder of the provinces, were ſeldom diſpoſed to enter very heartily into meaſures for reſtraining ſuch enormities. The riches amaſſed by the offender afforded him, at the ſame time, the means of preventing any troubleſome inquiry into his behaviour; and in proportion to the extent of his guilt, was commonly the degree of ſecurity which he

he afterwards enjoyed. Cicero affirms, that in the ſmall government of Cilicia, after ſaving to the public the amount of a full million ſterling, which the former governors had applied to their private uſe, he had, at the end of the year, about twenty thouſand pounds of clear gain.

But while Rome was thus extending conqueſt and ſlavery over the world, ſhe communicated to the conquered nations her knowledge, and her refinement in the arts of life. The great military eſtabliſhment maintained in every province, in order to keep the inhabitants in ſubjection; the large body of civil officers neceſſary in the various departments of public adminiſtration; the numerous colonies, compoſed of Roman citizens, who ſettled in every part of the empire, and carried along with them the Roman inſtitutions and cuſtoms; and, above all, the frequent reſort of the chief provincial inhabitants to the capital of the empire, a natural conſequence of their dependence; theſe circumſtances produced an univerſal imitation of Roman manners, and throughout the dominions of Rome contributed to ſpread her language, arts, and literature.

Theſe

Theſe advantages compenſated in ſome meaſure, and were ſometimes more than ſufficient to counterbalance, the loſs of independence. Wherever the Roman dominion was eſtabliſhed, the ruder parts of the world were civilized.

Among all the countries ſubdued by the Romans, none was in a more uncultivated ſtate than Britain; and it is probable that no country derived greater advantages from her ſubjection. A great part of the inhabitants, before they were incorporated in the Roman empire, ſeem to have been ſtrangers to agriculture, and to have been maintained chiefly by their herds of cattle. They were divided into ſmall independent tribes, under their ſeveral chiefs, as commonly happens in that early ſtate of mankind; and theſe little ſocieties being much addicted to plunder, and for that reaſon frequently engaged in hoſtilities, a regard to mutual defence had occaſionally produced alliances among ſome of them, from which a variety of petty princes, or kings, had ariſen in different parts of the country.

The Roman adminiſtration of Britain does not appear to have been diſtinguiſhed from that

of the other provinces at a diſtance from the ſeat of government. After the reduction of all that part of the iſland accounted worth the trouble of acquiring, the firſt great object was, to aſcertain and preſerve the conqueſt by a permanent military force. For this purpoſe the inhabitants were completely diſarmed; and a ſtanding army, compoſed, according to the loweſt account, of three legions, amounting to upwards of thirty-ſix thouſand foot and ſix thouſand horſe, was introduced, and regularly maintained *. Theſe troops were diſtributed over the province, and placed in ſtations where their ſervice could be moſt uſeful, either by overawing the natives, or by repelling the invaſions of the unconquered tribes in the North. When not engaged in war, they were employed, according to the uſual practice of the Romans, in public works; in building and repairing theſe two northern walls, which at different times were intended as the boundary of the province; in conſtructing forts; in clearing the country of its foreſts

* Horsely Brit. Rom. Whitaker Hiſt. Mancheſter, v. i. b. i. ch. 6.

and

and marſhes; and in opening a communication between different parts of it, by an uninterrupted chain of high roads.

There are ſaid to have been, in the whole province, about a hundred and fifty Roman ſtations; which were connected with inferior fortreſſes, erected at convenient diſtances, and garriſoned with regular troops *. Each of theſe garriſons occaſioned a reſort of the neighbouring inhabitants, and probably gave riſe to a ſort of village or town, in which a promiſcuous ſettlement was formed by Roman families, and thoſe of the natives. The effect of ſuch an intercourſe, in the communication of manners and cuſtoms, may eaſily be conceived. In particular, as the military people were often rewarded by the public with landed poſſeſſions, their example could not fail to ſpread the knowledge and practice of agriculture, while their induſtry in the management of their eſtates contributed to beautify and improve the face of the country.

The connexion with Britain, which the ſoldiers of the Britiſh army acquired by living in

* Whitaker Hiſt. Mancheſter, v. i. b. i. ch. 8.

the

the country, was even ſeldom broke off when they were diſmiſſed from the ſervice. Though drawn originally from different parts of the empire, yet, having formed an attachment to the place in which they had ſo long reſided, they were commonly diſpoſed, in their old age, and when they had merited their diſmiſſion, to paſs the remainder of their days in the province. The offspring of theſe people became natural inhabitants: and Britain, in this manner, was continually receiving freſh ſupplies of Romans, who compenſated for ſuch of the natives as, in the courſe of recruiting the armies, were naturalized into other provinces.

After eſtabliſhing a ſufficient military force to maintain her authority, the attention of Rome was directed to the ſuppreſſion of internal diſorder among her ſubjects, by the regular diſtribution of juſtice. The jealouſy entertained by the firſt emperors had ſuggeſted an important regulation for limiting the dangerous power of their provincial governors. From the time of Auguſtus, the provinces near the ſeat of the empire, as they enjoyed the proſpect of tranquillity, were diſtinguiſhed from ſuch as were ſituated at a diſtance, and

on

on that account more expoſed to diſturbance. In the former, the governor was merely a civil officer, and had no direction of the forces; but in the latter, it was thought neceſſary that his authority ſhould be rendered more effectual, by raiſing him to the head of the military, as well as the civil department*.

The preſident or governor of Britain was in the latter ſituation; having the command of the army, together with the ſupreme juriſdiction, and the appointment of inferior magiſtrates. In the courts held by all theſe officers, the laws of Rome were conſidered as the ſtandard of every deciſion. Wherever the Romans extended their dominion, it was their conſtant aim to introduce their own juriſprudence; a ſyſtem which was calculated to eſtabliſh good order and tranquillity among the conquered people, as well as to promote the intereſt of the conquerors. The introduction of that ſyſtem into Britain was more immediately neceſſary, to prevent thoſe private wars, and to reſtrain thoſe acts of violence and injuſtice, to which the inhabitants were ſo much

* Dio. Caſſ. 53.—Hein. ad. lib. i. dig. tit. 16. 18.

addicted. It is not likely, however, that an innovation of ſuch importance was accompliſhed all at once. In the public adminiſtration of the province, the Roman magiſtrates aſſumed an abſolute authority; but, in matters of private property, the Britiſh chiefs and petty princes appear, for ſome time after the conqueſt, to have retained their ancient juriſdiction, and to have determined the differences of their own tenants and dependants. But this juriſdiction became gradually more circumſcribed, and ſeems at laſt to have been entirely annihilated. The continual migration of foreigners into the province, brought along with them the faſhions acquired in other parts of the empire; while the multiplication and enlargement of the Britiſh towns, which, for the moſt part, were governed according to the policy of Rome, extended the influence of the Roman judges. The province of Britain is ſaid to have contained about an hundred and forty towns, nine of which were of the rank of colonies: and the cuſtoms, as well as the notions of order and juſtice, which prevailed in thoſe places of common reſort, were eaſily propagated over the ſurrounding country. The

long

long continuance of the provincial government, and the progreſs of the natives in civilization, diſpoſed them to neglect their original magiſtrates, and to court the favour of the ruling powers, by an immediate appeal to their protection.

To procure a revenue, not only ſufficient for defraying the expences of the civil and military eſtabliſhments, but alſo capable of affording annual remittances to the emperor, was a third, and perhaps the principal object of his adminiſtration. The Britons were ſubjected to taxes of the ſame nature with thoſe which were levied from the other provinces*. The proprietors of arable land paid an annual quit-rent, ſuppoſed to be equal to a tenth part of the fruits; and the poſſeſſors of paſture ground were alſo loaded with a duty, proportioned to the number of their cattle†. The cuſtoms and exciſe, in this part of the Roman dominions, are ſaid to have been remarkably heavy‡; but the impoſitions which excited

* See an account of the taxes throughout the Roman dominions, in Burman. de Vect. Rom.

† This tax upon cattle was called *Scriptura*.

‡ Strabo, lib. iv.

moſt complaint were, a poll-tax, and a duty upon funerals. Theſe, being levied at a fixed rate, without any regard to the poverty or riches of the people, and having no immediate dependance on the proſperity of trade and manufactures, were moſt eaſily increaſed at pleaſure, and therefore ſeem to have been the uſual expedients for raiſing ſupplies, when every other taxation had been found ineffectual*.

The charge of collecting the revenue was committed to an *imperial procurator*, who had the ſuperintendance of all the inferior officers employed in this branch of adminiſtration; and in Britain, as well as in the other provinces, the principal taxes were let to farmers for the payment of a yearly rent. From this mode of collection, ſo liable to abuſe, and from the nature of the government in other reſpects, it may ſeem unneceſſary to remark, that the Britons were expoſed to grievous extortions. In the countries near the ſeat of the empire, and within the obſervation of the ſovereign, were abandoned to the arbitrary meaſures of the

* See the terms in which Boadicea is made to complain of the two laſt-mentioned taxes. Xiphilinus in Nerone.

provincial

provincial officers, it cannot be ſuppoſed that thoſe at a diſtance were in a better ſituation. Tacitus mentions, in terms of the higheſt indignation, the unfeeling rapacity of the Roman officers in Britain; which, at an early period, excited a general revolt of the inhabitants*.

It is well known, that the cities and provinces under the Roman dominion were often reduced, by the demands of government, to ſuch diſtreſs, as obliged them to borrow money at exorbitant intereſt: and that, by taking advantage of their neceſſities, the monied men of thoſe times were enabled to employ their fortunes in a very profitable manner. In this trade, though prohibited by law, and however infamous in its own nature, the beſt citizens of Rome (ſuch is the force of example) were not aſhamed to engage. Seneca the philoſopher, whoſe philoſophy, it ſeems, was not incompatible with the love of money, lent the Britons, at one time, above three hundred and twenty-two thouſand pounds†.

* Tacit. Agric. ch. 15.

† Χιλιας μυριαδας, quadrigentes ſeſtertium; viz. £. 322,916. 13. 4. Xiphilinus in Nerone.

Were it poſſible to aſcertain the extent of the revenue drawn from the province of Britain, we might thence be enabled to form a notion of the opulence and improvement attained by the inhabitants. Dr. Henry, who has made a very full collection of the facts mentioned by ancient authors concerning the provincial government of this Iſland, ſuppoſes that its annual revenue amounted to no leſs than two millions ſterling*. But this is a mere conjecture, unſupported by any authority; and it ſhould ſeem that no accounts

This ſuppoſition is built upon a calculation of Lipſius, who makes the revenue of Gaul amount to £. 2,421,875. This calculation is only ſupported by a paſſage of Cicero, quoted by Strabo, which mentions the revenue of Egypt, in the time of Auletes, the father of Cleopatra, as amounting to that ſum; and by a paſſage in Velleius Paterculus, aſſerting that Egypt in taxes yielded *nearly as much as Gaul.* But the evidence ariſing from this is too ſlight, when oppoſed to the authority of Suetonius, and that of Eutropius; who ſay, that Cæſar drew from Gaul only *quadringenties*, £. 2,916. 13. 4 Suppoſing, however, the fact to be aſcertained, that the revenue of Gaul was about two millions and a half, is there ſufficient ground to infer from this that the revenue of Britain was, at leaſt, two millions? —Lipſius de Magn. Rom.—Henry's Hiſt. v. i.

have

have been tranſmitted by hiſtorians, from which the point can be determined.

The improvements made by the Britons in agriculture were ſuch, as to produce a regular exportation of corn, for ſupplying the armies in other parts of the empire. Their houſes were built in the ſame ſtyle of architecture; and many of them were adorned with ſtatues and public ſtructures, in the ſame taſte of magnificence which prevailed in Italy. In this branch of labour, their mechanics were even ſo numerous, and had ſuch reputation, as to be employed upon the neighbouring continent. In weaving cloth they appear alſo to have made conſiderable proficiency. We are informed, in particular, that linen and woollen manufactures were eſtabliſhed at Winchester

The foreign trade of Britain, ariſing from her valuable tin mines, and for which the iſland was, at a very remote period, frequented by the Phenicians, and other commercial nations of antiquity, is univerſally known. When this branch of commerce, together with thoſe of

lead, wool, hides, and ſome other native productions, came to be ſecured of a regular market, under the eye and protection of the Roman magiſtrate, they were undoubtedly puſhed to a conſiderable extent.

In taſte and literature, the advances made by the Britons were no leſs conſpicuous than in the common improvements of life. Even in the time of Agricola, "the youth of diſtinguiſhed families," according to the great hiſtorian of that age, "were inſtructed in the "liberal arts: inſomuch that thoſe who but "lately were ignorant of the language, began "to acquire a reliſh for the eloquence of "Rome. They became fond of appearing in "the dreſs of the Romans, and by degrees "were led to imitate their vices, their luxury, "and effeminacy, as well as their elegance "and magnificence*."

The faſhion of travelling for education, and of reſiding in Rome, and in other learned and polite cities of the empire, was early introduced among the Britons; who, in a noted paſſage of Juvenal, are mentioned as being indebted

* Tacit. Agric. c. 21.

to

to the Gauls for their eminent proficiency in pleading at the bar*. In Britain, as well as in other provinces, the utmoſt attention was given by government, to propagate the knowledge not only of the Latin and Greek languages, but of all thoſe branches of ſcience that enjoyed any reputation; and for this purpoſe, academies and ſchools, with public encouragement, are ſaid to have been erected in the principal towns. From theſe different ſources the Roman learning, in all its parts, was communicated to this Iſland; where it flouriſhed for ſome time, and was afterward ſubjected to a ſimilar decay as in all the other provinces of the empire.

The ſucceſſive changes which happened in the political ſituation of the Roman empire produced alterations in the adminiſtration of all the provinces, as well as of Britain in particular. The deſpotical government of Rome, as it had been at firſt eſtabliſhed, ſo it was afterwards entirely ſupported by a military force. In its original, therefore, it contained

* Gallia cauſidicos docuit facunda Britannos.—Juv. Sat. 15.

the

the ſeeds of its deſtruction. As, by his tyrannical behaviour, the reigning emperor became naturally the object of deteſtation and reſentment to his ſubjects, he was expoſed to the continual hazard of inſurrection, from the diſguſt or caprice of that army which he kept on foot for maintaining his authority. It was, at the ſame time, impoſſible that he ſhould command in perſon the different armies neceſſary for the defence of the whole empire, or that he ſhould prevent the general of every ſeparate army from acquiring influence and popularity with the troops under his direction. The greateſt and moſt veteran of thoſe armies were unavoidably employed on the frontiers, where their ſervice was moſt needed, and where their courage and activity were moſt exerciſed; and their leaders being too far removed from the chief magiſtrate to meet with any diſturbance in forming their ambitious plans, were frequently in a condition to render themſelves independent, or to open a direct paſſage to the throne.

But the independence of the opulent and leading men, in the diſtant provinces, was increaſed by another circumſtance of ſtill greater importance.

importance. The firſt emperors, who poſſeſſed the extenſive and rich countries lately ſubdued by the Roman arms, enjoyed an immenſe revenue, and their influence muſt have been proportionably great; but the oppreſſive nature of their government, and the unbounded licence which they gave to the plunder of their ſubjects, could not fail to diſcourage induſtry, and of courſe to reduce the people to poverty and beggary. The extent of the Roman empire had, in the mean time, become ſo great, that the expence of maintaining forces on a diſtant frontier, with a view of making any farther conqueſt, ſeemed to overbalance the advantages which it might be ſuppoſed to produce. Adrian, a prince no leſs diſtinguiſhed for activity than wiſdom, was induced to contract his dominions, and to abandon a part of what had been already acquired, that he might be able to preſerve the remainder in greater ſecurity. Thus, while the old channels of public revenue were drained, no new ſources could be provided to ſupply the deficiency. In this ſituation the emperor felt a gradual decline of his authority; and as he became leſs able to protect the inhabitants of the provinces,

or

or to puniſh their diſobedience, they were more diſpoſed to ſhake off their allegiance, and emboldened to follow the fortunes of any adventurer who found himſelf in a condition to diſturb the public tranquillity.

For preventing theſe diſorders, it was thought a prudent meaſure to aſſociate different leaders in the ſupreme power. The firſt traces of this practice may be diſcovered about the time of Trajan and the Antonines; who partly, as it ſhould ſeem, from affection, and partly from political motives, adopted in their own lifetime *a Cæſar*, or ſucceſſor to the crown. The ſame plan was farther extended by Diocleſian; who divided the ſovereignty between two emperors and two Cæſars; and who ſeems to have thought that, to preſerve the empire from falling in pieces, it was requiſite to ſubmit to the manifeſt inconveniences ariſing from the jealouſy and bad agreement of ſo many independent heads. The emperor Conſtantine rendered this diviſion more permanent, by erecting a great Eaſtern capital, which became the rival, and even ſuperior, in opulence and dignity, to that of the weſt.

In

In conformity to ſuch views of dividing the ſovereignty among thoſe leaders who might otherwiſe be diſpoſed to tear the empire aſunder, ſubdiviſions were made in thoſe territories which had formerly compoſed a ſingle province; and in each ſubdiviſion a chief officer was appointed, whoſe authority might ſerve to limit and circumſcribe that of him who had the government of the whole. Thus the ſame prince who founded Conſtantinople, having diſbanded the old prætorian guards, whoſe power had long been ſo formidable, diſtributed the whole empire into four great *præfectures*, correſponding to the four joint ſovereigns already eſtabliſhed. Each præfecture he divided into certain large territories, called *juriſdictions*, under their ſeveral governors; and each juriſdiction he parcelled out into ſmaller diſtricts, under the denomination of *provinces*, which were committed to the care of deputy-governors.

Britain, which originally formed a ſingle province, but which, by the emperor Severus, had been divided into two, was, according to this arrangement, multiplied into five provinces; and the *vicar* or governor of the whole, enjoyed

enjoyed a paramount authority to that of its five deputy-governors.

The direction of the civil, and that of the military eſtabliſhment, were, for the ſame reaſon, ſeparated, and placed in different hands. After the diſmiſſion of the prætorian guard, and of its commander, two military officers were appointed, the one of which had the command of the infantry, and the other of the cavalry, throughout the empire; and under them the number of generals, in particular diſtricts, appears to have been conſiderably increaſed. The Roman forces in this Iſland came, in the later periods of its provincial government, to be under the direction of three independent officers; the *duke of Britain,* who commanded on the northern frontier; the *count of Britain,* who conducted the troops in the interior parts of the country; and the *count of the Saxon ſhore,* employed in ſuperintending the defence of the ſouthern and eaſtern coaſts, which, from about the beginning of the third century, had been expoſed to frequent incurſions from the Saxons.

All theſe precautions, however, by which the Roman emperors endeavoured to maintain ſubor-

ſubordination and dependance in the different parts of their dominions, were ineffectual in oppoſition to the prevailing current of the times. The ſame unhappy ſyſtem which tended to looſen the bands of government, contributed alſo to render the military eſtabliſhment unfit for defence againſt a foreign enemy. As all power and diſtinction were ultimately derived from the army, it was the intereſt of every general to court the favour of the troops under his command, no tonly by enriching them with donations and emoluments, but by treating them with every kind of indulgence. The natural conſequence of ſuch a ſituation was the procuring to the ſoldiers an exemption from the laborious duties of their profeſſion. Feeling their own conſequence, the military people ſet no bounds to their licentious demands, and were rendered inactive and effeminate, in the ſame proportion as they became haughty and inſolent. The heavy armour, which in former times had been uſed with ſo much advantage, was therefore laid aſide, as too cumberſome and fatiguing; and the ancient military diſcipline, the great cauſe of all their victories, was at length entirely neglected.

It

It was thus that the Romans, being deprived of that ſuperiority which they had formerly poſſeſſed, in their encounters with rude and ignorant nations, found themſelves unable to reſiſt the fierce courage of thoſe neighbouring barbarians, who, about the fifth century, were invited to attack them by the proſpect of plunder and of new ſettlements.

In this declining ſtate of the Roman empire, the revenue of the provinces, by ſuffering a gradual diminution, became at length inſufficient for the ſupport of their civil and military eſtabliſhments; and whenever any country had been reduced to ſuch a degree of poverty as to be no longer able to repay the trouble and expence of maintaining it, good policy ſeemed to require that it ſhould be abandoned. To ſuch an unfruitful condition the diſtant provinces, and Britain more eſpecially, appear to have been faſt approaching, in the reign of Arcadius and Honorius, when a deluge of barbarians, preſſing on all ſides, threatened the ſtate with ſudden deſtruction, and made it neceſſary to withdraw the forces from this Iſland, in order to defend the richer and more important parts of the empire.

The

The ſituation of Britain, when thus deſerted by the Romans, was no leſs new and ſingular, than it was alarming and unhappy. When mankind are formed into political ſocieties, and have acquired property, they are uſually provided with one ſet of regulations for repelling the attacks of their enemies, and with another for ſecuring internal tranquillity. But the Britons, upon this extraordinary emergency, were left equally deſtitute of both. From the diſtruſtful jealouſy of Rome, they had been removed from all concern in military tranſactions, at leaſt in their own country, and made to depend for their ſafety upon an army compoſed entirely of foreigners. In ſuch a ſtate they had remained for more than three centuries, enjoying the protection of their maſters, without any call to exert themſelves in their own defence, and cultivating thoſe arts which tend to ſoften the manners, while they inſpire an averſion from the dangers and hardſhips of a martial life. Thus the Britons, in their advances towards civility, loſt the courage and ferocity of barbarians, without acquiring the ſkill and addreſs of a poliſhed nation; and they ceaſed to be warriors by nature,

without being rendered ſoldiers by diſcipline and education.

But the departure of the Romans from Britain was no leſs fatal to all the inſtitutions of civil government. The governors and other officers, who directed the adminiſtration of public affairs, the farmers engaged in the different departments of the revenue, the magiſtrates of Roman appointment, who determined both civil and criminal cauſes, and who had now acquired a complete juriſdiction over the whole province, had no longer occaſion to remain in a country which was totally abandoned by its maſter, and in which, by the removal of the army, they had loſt the means of maintaining their authority. The courts of juſtice, therefore, were diſſolved; the taxes were aboliſhed; and all order and ſubordination were deſtroyed. Even private individuals, of Roman extraction, who had acquired eſtates in Britain, endeavoured to diſpoſe of their fortunes; and by leaving the Iſland, avoided the ſtorm that appeared to be gathering around them.

The diſaſters which followed were of ſuch a nature as might be expected from the anarchy

chy and confuſion which prevailed in the country. The Scots and Picts, who, in the northern part of the Iſland, had remained unconquered, and retained their primitive barbarous manners, took advantage of this favourable opportunity, to invade and plunder their more opulent neighbours. They met with little reſiſtance from the Britons, who, giving way to their fears, and conſcious of their inferiority, ſeemed to place their only refuge in the protection of their ancient rulers. The abject manner in which they, at different times, ſolicited that protection; the behaviour of their ambaſſadors, who in the preſence of the emperor rent their garments, and putting aſhes upon their heads, endeavoured to excite commiſeration by tears and lamentations; the letter which they wrote to Ætius, the præfect of Gaul, inſcribed *the groans of the Britons*, and in which they ſay, *the barbarians drive us into the ſea, the ſea throws us back upon the barbarians, and we have only the hard choice left us, of periſhing by the ſword, or by the waves*; theſe particulars, which are handed down by hiſtorians, exhibit the ſhocking picture of a people totally deſtitute of ſpirit, and unable to collect

reſolution even from deſpair. Upon two occaſions they obtained from Rome the aid of a military force, by which their enemies were ſurpriſed, and repulſed with great ſlaughter; but the relief which this afforded was merely temporary, and they received a peremptory declaration, that, from the embarraſſed condition of the empire, no future ſupplies of this kind could be ſpared *.

The conſternation of the Britons, in this helpleſs condition, may eaſily be conceived, though in the rude annals of that period it is, perhaps, painted with ſome degree of exaggeration. Time and neceſſity, however, ſuggeſted the means of guarding againſt the evils to which they were expoſed. The proprietors of land poſſeſſed a natural influence over the people whom they maintained upon their eſtates; and this was the ſource of a juriſdiction, which, during the ſubſiſtence of the Roman dominion, had been in great meaſure extinguiſhed, but which, upon the diſſolution of the Roman courts, was of courſe revived and rendered independent. The ſame influ-

* Gildæ Hiſt.—Bedæ Hiſt. Eccleſ.

ence

ence enabled theſe perſons to call out their tenants to war, and to aſſume the direction of their conduct during a military enterprize. By theſe two branches of authority, a very ſimple form of government was gradually introduced. The whole country was broken into ſeparate diſtricts, according to the extent of territory in the poſſeſſion of individuals; and fell under the civil and military power of ſo many chiefs, the moſt opulent of whom appear to have been dignified with the title of princes. By the efforts of theſe leaders, it is likely that private robbery and violence were, in ſome degree, reſtrained, and the people were encouraged to return to their tillage and ordinary employments, from the neglect of which, it is ſaid, a famine had been produced. But their great object was to oppoſe the northern invaders. For this purpoſe they elected a general of their united forces, upon whom, after the example of the Romans, they beſtowed the appellation of the *duke of Britain*. The ſame perſon preſided in the aſſemblies held by the chiefs, in which the great affairs of the nation appear to have been determined.

After the government had remained for

ſome time in this channel, Voltigern, one of the moſt opulent of their princes, was promoted to that high dignity; and upon a new alarm of an invaſion from the Scots and Picts, he is ſaid to have called a national council, in which it was agreed to ſolicit the aſſiſtance of the Saxons. As this meaſure was fatal in its conſequences, it has been univerſally decried, and ſtigmatiſed as the height of imprudence; but we ought to conſider that it proceeded from the ſame ſyſtem of policy which has been practiſed and approved in all ages, that of courting the alliance of one nation, in order to form a balance againſt the formidable power of another; and the cenſures which, in this inſtance, have been ſo liberally beſtowed upon the Britons, are a plain proof how ready we are to judge of actions from the good or bad ſucceſs which attends them, or how difficult it is to eſtabliſh any general rules of conduct, that will not appear groſsly defective in a multitude of the particular caſes to which they may be applied.

CHAP.

CHAP. II.

Character and Manners of the Saxons.

OF thoſe barbarians who paſſed under the denomination of Saxons, and who, at the time when they were invited to aſſiſt the Britons, inhabited the northern parts of Germany, it is of little moment to aſcertain the origin, or to trace the ſeveral places in which they had previouſly reſided. The Germans, who ſubdued the weſtern provinces of the Roman empire, have been ſuppoſed to poſſeſs a ſingular character among the rude inhabitants of the world, and to be diſtinguiſhed by their eminent qualities and virtues. Such an opinion may be aſcribed to the elegant deſcription of that people by the maſterly pen of Tacitus; to the great revolutions which they atchieved in Europe; and, above all, to that national vanity which is more extravagant than the vanity of individuals, becauſe the multitude of perſons who are influenced by the ſame weakneſs keep one another in countenance. But there is reaſon to believe that the ancient inhabitants of Germany exhibited the ſame

diſpoſitions and manners, and adopted ſimilar inſtitutions and cuſtoms, to thoſe which may be diſcovered in ſuch barbarians, of every age or country, as have been placed in ſimilar circumſtances.

Deriving their chief ſubſiſtence from the paſturing of cattle, they generally poſſeſſed conſiderable wealth in herds and flocks; but as they were little acquainted with tillage, they ſeem to have had no idea of property in land. Like the early nations deſcribed in the Sacred Hiſtory, they were accuſtomed frequently to change their abode. Regarding chiefly the intereſt of their cattle, they often found it convenient to wander from one place to another, according as they were invited by the proſpect of new paſtures; and in their migrations, they were under no reſtraint, either from the cares of huſbandry, or from the nature of their poſſeſſions.

But while the management of their cattle conſtituted the ordinary employment of theſe people, they were alſo frequently engaged in war. In common with all other barbarous nations, they were much addicted to theft and rapine. The right of property muſt be long eſtabliſhed,

eſtabliſhed, before the violations of it can be regarded as heinous offences; and it is neceſſary that men ſhould be habituated to an extenſive intercourſe of ſociety, before they are preſented with ſufficient inducements to ſacrifice the immediate profits of fraud and violence, to the diſtant but ſuperior advantages, derived from their living together upon good terms, and maintaining an amicable correſpondence. The ancient Germans, inhabiting a country almoſt entirely overgrown with wood, or covered with marſhes, were often reduced to great ſcarcity of proviſions; and were therefore ſtrongly inſtigated, by hunger and miſery, to prey upon one another. Example, in ſuch a caſe, found no difficulty to excuſe or vindicate what cuſtom had rendered univerſal.

The rude inhabitants of the earth appear, in all ages and countries, to have been divided into ſeparate tribes and villages; a conſequence of their hoſtile diſpoſitions. When, from accidental circumſtances, a family of ſuch people had been planted, at ſo great a diſtance from their friends and acquaintance as to prevent all correſpondence with them, its members, from inclination, as well as from a regard

gard to mutual defence, were uſually diſpoſed to live together, and to avoid much intercourſe with neighbours by whom they were likely to be treated as enemies. If their multiplication rendered them too numerous to be all maintained under the ſame roof, they naturally ſubdivided themſelves into different families, who erected their huts beſide one another; and if at length their village had been ſo enlarged as to produce a difficulty in finding ſubſiſtence, they were led, by degrees, to remove that inconvenience, by ſending out little colonies, with which, notwithſtanding their diſtance, they frequently preſerved an alliance and connection. The German tribes became larger and more extenſive, according as, by the encreaſe of their cattle, they were enabled to live in greater affluence. In that part of Germany which was known to the Romans, there have been enumerated about forty different tribes or nations, many of which appear to have enjoyed conſiderable opulence and power. But concerning the number or extent of the villages belonging to each of theſe, little or no account can be given.

The political regulations eſtabliſhed among the

the ancient Germans were few and ſimple, and ſuch as their ſituation could hardly fail to ſuggeſt. Every ſociety, whether great or ſmall, that had occaſion to act in a ſeparate military capacity, required a ſeparate leader: for which reaſon, as every family was under the direction of the father, ſo every village had its own chief; and at the head of the whole tribe or nation there was a great chief or king. How far the king, or the inferior chiefs, enjoyed their dignity by election, or by hereditary deſcent; it may be difficult to determine; but their authority was far from being abſolute. It was the buſineſs of every chief to compoſe the differences, and, probably, to command the forces, of that village over which he preſided. The king too ſeems to have acted with their advice in the ordinary adminiſtration of public affairs; but in matters of great moment, ſuch as the making of laws, or the trial of capital offences, he was obliged to procure the concurrence of a great council, compoſed of all the heads of families*.

* "In pace, nullus eſt communis magiſtratus; ſed prin-
"cipes regionum atque pagorum inter ſuos jus dicunt, con-
"troversiasque minuunt. Ubi quis ex principibus in con-
cilio

The general character of theſe barbarians was ſuch as might be expected from their manner of life. It conſiſted not of many features, but they were diſtinctly and ſtrongly marked. As in the carnivorous brute animals, obliged very often to fight for their food, and expoſed to continual ſtriſe and contention in the purſuit of mere neceſſaries, their paſſions,

" cilio dixit se ducem fore—qui sequi velint profiteantur; " consurgunt ii qui et causam et hominem probant, suum- " que auxilium pollicentur, atque ab multitudine conlau- " dantur: qui ex iis secuti non sunt, in desertorum ac prodi- " torum numero ducuntur, omniumque iis rerum postea " fides derogatur." Cæsar de Bel. Gal. 6. § 23.——" Re- " ges ex nobilitate, duces ex virtute sumunt. Nec regibus " infinita aut libera potestas; et duces exemplo potius quam " imperio, si prompti, si conspicui, si ante aciem agunt, ad- " miratione præsunt."——" De minoribus rebus principes " consultant, de majoribus omnes: ita tamen, ut ea quoque, " quorum penes plebem arbitrium est, apud principes pertrac- " tentur."——" Ut turbæ placuit, considunt armati. Silen- " tium per sacerdotes, quibus tum et coercendi jus est, impe- " ratur. Mox rex, vel principes, prout ætas cuique, prout " nobilitas, prout decus bellorum prout facundia est, audi- " untur, auctoritate suadendi magis quam jubendi potestate." ——" Licet apud concilium accusare quoque, et discrimen " capitis intendere."——" Eliguntur in iisdem conciliis et " principes, qui jura per pagos vicosque reddunt."——Tacit. de Mor. German. c. 7. 11. 12.

the

though excited by few objects, were ſtrong and violent. Their ſituation, at the ſame time, occaſioned a wonderful ſimilarity in the diſpoſitions and habits of individuals. In every poliſhed nation, the labour and application of the people is uſually ſo divided, as to produce an endleſs variety of characters in thoſe who follow different trades and profeſſions. The ſoldier, the clergyman, the lawyer, the phyſician, the taylor, the farmer, the ſmith, the ſhopkeeper; all thoſe who earn a livelihood by the exerciſe of ſeparate employments, whether liberal or mechanical, are led, by the different objects in which they are converſant, to contract ſomething peculiar in their behaviour and turn of thinking. But the ancient inhabitants of Germany had made too little progreſs in arts, to require that a ſingle perſon ſhould beſtow his whole attention upon any one branch of labour, in order to acquire the uſual degree of ſkill and proficiency in it. Every man therefore was accuſtomed to exerciſe indiſcriminately the few employments with which they were acquainted. Every family built its own cottage, faſhioned its own tools and utenſils, managed its own cattle, and took precautions for its own

ſupport

ſupport and defence. Thus the whole people, being employed nearly in the ſame manner, and having no purſuits but ſuch as were ſuggeſted by their moſt immediate wants, were trained up in an uniform ſort of diſcipline, and acquired that uniformity of manners and cuſtoms, which is commonly obſerved in perſons of the ſame trade or profeſſion. Even the nations inhabiting the moſt diſtant regions of that extenſive country appear to have been no otherwiſe diſcriminated than by the different ſhades of barbariſm and ferocity which the climate or ſituation, more or leſs favourable to improvement, might eaſily be ſuppoſed to produce.

Among people who are conſtantly expoſed to the attacks of their neighbours, and who are almoſt continually employed in war, courage and other military qualities are naturally intitled to hold the firſt rank. There is an *active* and a *paſſive* courage, which may be diſtinguiſhed from each other, as they ſeem to depend upon different principles, and are not always to be found in the ſame perſons. The former is diſplayed in the voluntary encountering of danger, the latter in bearing pain and diſtreſs

diſtreſs with firmneſs and conſtancy. Valour, which demands a ſudden and violent effort of reſolution, may be regarded as a maſculine quality; while fortitude, which, in many caſes, is the fruit of calmer but more continued exertion, is often conſpicuous in the weaker ſex. In order that, with our eyes open, we may expoſe our lives to imminent danger, we muſt be excited by a ſtrong deſire of procuring eſteem and applauſe, either from others, or from the reflection of our own minds. Efforts of this kind, it is evident, are moſt likely to be made in thoſe countries where, from long practice, and frequent emulation in fighting, martial exploits have come to be univerſally admired, and looked upon by every one as the infallible road to honour and diſtinction. Fortitude under pain and diſtreſs may, on the contrary, be promoted by the oppoſite circumſtances, by the want of ſenſibility, or by a conviction that our ſufferings are beheld with unconcern and indifference. To complain or repine, in the midſt of affliction, is an attempt to procure relief, or at leaſt compaſſion, from others; and when we find that our complaints are diſregarded, or treated with ſcorn and deriſion,

ſion, we are led to exert our utmoſt reſolution in order to ſmother and reſtrain them.

The ſavages, who live by hunting and fiſhing, are placed in a ſituation more favourable to fortitude than to valour. Expoſed by their manner of life to innumerable hardſhips and calamities, they are too much loaded by the preſſure of their own wants and ſufferings, to feel very ſenſibly thoſe of their neighbours. They diſdain, therefore, to ſolicit that ſympathy, which they know by experience will not be afforded them; and having, from their daily occurrences, been long inured to pain, they learn to bear it with aſtoniſhing firmneſs, and even to endure every ſpecies of torture without complaining. As, on the other hand, they live in very ſmall ſocieties, and, in order to find ſubſiſtence, are obliged to remove their different villages to a great diſtance from one another, they are not apt to be engaged in frequent or extenſive military enterprizes, nor to attain any degree of refinement in the methods of conducting their hoſtilities. The punctilios of military honour are unknown to them. They ſcruple not to take any unfair advantage in fighting, and can ſeldom be brought

brought to expoſe themſelves in the open field. The unrelenting and blood-thirſty Indian of America is accuſtomed to lie concealed for weeks, that he may have a convenient opportunity of ſhooting his enemy, and may then with ſafety enter his cabin, to rob and murder the family.

Nations who ſubſiſt by paſturing cattle, as they live in larger ſocieties, and are ſupplied with food in greater abundance, are more at leiſure, and have greater incitements to cultivate their ſocial diſpoſitions. But their magnanimity, in bearing pain and affliction with apparent unconcern, is naturally diminiſhed by their advancement in humanity; and according as individuals diſcover that their diſtreſſes meet with greater attention from their companions and acquaintance, they are more encouraged to diſplay their ſufferings, and to ſeek the tender conſolation of pity, by giving way to the expreſſion of ſorrow and uneaſineſs. They are alſo likely to acquire a much higher degree of the military ſpirit. The wandering life of ſhepherds is the occaſion of bringing frequently into the ſame neighbourhood a variety of ſtranger tribes; among whom any

accidental jealouſy, or interference of intereſt, is apt to kindle animoſity, and to produce quarrels and hoſtilities. In the frequent wars that ariſe from ſuch a ſituation, and which are carried on with the ardour and ferocity natural to barbarians, the victors, having no fixed reſidence, are at full liberty to proſecute their ſucceſs without interruption; and as, in every migration, ſuch people are obliged to carry along with them their wives, and children, and ſervants, together with their herds and flocks, and even their furniture and utenſils, a deciſive battle never fails to reduce one tribe completely under the power of another. With the ſame eaſe with which the conquerors may purſue their victory, they can incorporate with themſelves the vanquiſhed party, and make uſe of their aſſiſtance in any future enterprize. Thus by repeated ſucceſſes, and by a gradual accumulation of forces, a ſingle tribe may, in a ſhort time, become ſo powerful, as to meet with no enemy in a condition to cope with them, and be excited with great rapidity to overrun and ſubdue a vaſt extent of country. Hiſtory is accordingly filled with the rapid and extenſive conqueſts made by nations in this

this early ſtate of ſociety; of which, in particular, there occur many celebrated examples among the Arabs and Tartars.

Such was the condition of the ancient Germans; of whom it is remarked by the hiſtorian, that they were leſs diſtinguiſhed by their patience of labour, or by their capacity to bear the extremities of heat and cold, of hunger and of thirſt, than by their active courage, and their ardent love of military reputation *. "They "are more eaſily perſuaded," ſays Tacitus, "to march againſt an enemy, and to expoſe "themſelves in the field, than to plough the "earth, and to wait the returns of the ſea- "ſon. They account it unmanly to acquire "with ſweat what may be procured with "blood. When they engage in battle, it is a "diſgrace for the chief to be ſurpaſſed in va- "lour; it is a diſgrace for his followers not to "equal the bravery of their chief; it is perpe- "tual infamy to eſcape with ſafety, after the "fall of their leader. To defend and protect "his perſon, to devolve upon him the glory

* Laboris atque operum non eadem patientia; minimeque sitim æstumque tolerare, frigora atque inediam cœlo ſolove aſſueverunt. Tacit. de Mor. German. c. 4.

"of all their brave actions, is the principal "point of honour. The chiefs fight for vic- "tory, their followers for the reputation and "dignity of the chief*."

The ſame circumſtances which gave riſe to frequent hoſtilities between the members of different tribes, produced a ſtrong attachment between the individuals belonging to each of thoſe little ſocieties. United by a ſenſe of their common danger, and by their common animoſity, againſt all their neighbours, they were frequently required by their ſituation to defend and relieve one another, and even to hazard their lives for their mutual ſafety. Living in a ſmall circle of acquaintance, and having ſcarcely any intercourſe with the reſt of mankind, they naturally contracted ſuch prejudices and prepoſſeſſions as tended to flatter their own vanity, and to increaſe their partial regard for that village or tribe of which they were members. But however warmly attached to their kindred and friends, it could not be expected that, in their ordinary behaviour, they would exhibit much delicacy or

* Tacit. de Mor. German. c. 14.

refinement

refinement of manners. They were too little acquainted with the dictates of prudence and ſober reflection, to be capable of reſtraining the irregular ſallies of paſſion; and too little converſant in the arts of poliſhed ſociety, to acquire a facility of yielding up their own opinions, and of ſacrificing their own inclinations and humours, to thoſe of their companions. The head of every family, unaccuſtomed to bear oppoſition or controul, demanded an implicit ſubmiſſion and obedience from all its members. When he met with great provocation, it was not unuſual for him to take away the life of a ſervant; and this was regarded as an exerciſe of domeſtic authority, for which he could not be ſubjected to any puniſhment*. Even the feelings of natural affection did not prevent the children from being, in like manner, ſubjected to the arbitrary power of the father, and from experiencing, on many occaſions, the unhappy effects of his caſual diſpleaſure. Neither does the condition of the mother appear to have been

* "Occidere ſolent, non disciplina et severitate, ſed impetu et ira, ut inimicum, niſi quod impune." Tacit. de Mor. German. c. 25.

ſuperior to that of her children: the little attention which, in a rude age, is uſually beſtowed upon the pleaſures of ſex, and the inferiority of the women in ſtrength, courage and military accompliſhments, deprived them of that rank and conſequence which they enjoyed in a civilized nation. There is great reaſon to believe that the huſband commonly bought his wife from her father, or other male relations, and that he conſidered her in the light of a ſervant or ſlave. If ſhe was guilty of adultery (a crime which, from the general ſimplicity of manners, was probably not very frequent, but which, by introducing a connection with a ſtranger, was highly prejudicial to the intereſt of the family) the puniſhment inflicted by the huſband, was that of ſtripping her naked, turning her out of doors, and whipping her through the village *.

In the intercourſe of different families, and in their common amuſements, their behaviour

* Tacit. de Mor. German. c. 18. 19. The conformity of the German manners with those of other barbarous nations, in relation to the condition of women and children, I have endeavoured to illustrate, in a treatise entitled, *An Enquiry into the Origin of Ranks.*

was

was ſuited to the ſpirit and diſpoſition of a martial, but rude and ignorant people. Their military life, which was incompatible with induſtry, prevented the growth of avarice, the uſual attendant of conſtant labour and application in every lucrative profeſſion. Their employments were ſuch as united them by a common tie, inſtead of ſuggeſting the idea of a ſeparate intereſt, or engaging them in that ſtruggle for riches, by which the purſuits of every man are, in ſome meaſure, oppoſed to thoſe of his neighbour. Their herds and flocks, in which their wealth principally conſiſted, being under the management and direction of a whole village or tribe, were conſidered, in ſome ſort, as the joint property of all; ſo far at leaſt, as to render individuals willing, on all occaſions, to relieve their mutual wants, by ſharing their goods with one another. Hence that hoſpitality and generoſity which is ſo conſpicuous among ſhepherd nations in all parts of the world. "No nation," ſays the author above quoted *, "is more hoſpitable than the "Germans. They make no difference, in

* Tacit. de Mor. Germ. § 21.

"this reſpect, between a ſtranger and an ac-
"quaintance. When a perſon has been libe-
"rally entertained in one houſe, he is con-
"ducted to another, where he is received with
"the ſame hearty welcome. If a gueſt, at
"his departure, ſhould aſk a preſent from his
"entertainers, it is ſeldom refuſed; and they
"will aſk any thing of him with the ſame
"freedom. They are fond of making pre-
"ſents, which are ſcarcely underſtood to lay
"the receiver under any obligation."

Their military operations, no doubt, required a violent, though an irregular and tranſient exertion; but upon the concluſion of an expedition they were completely at liberty to indulge themſelves in reſt and idleneſs. From theſe oppoſite ſituations, they contracted oppoſite habits, and became equally reſtleſs and ſlothful. When not engaged in the field, the warriors diſdained to aſſiſt in domeſtic offices, they even ſeldom exerciſed themſelves in hunting; but, leaving the care of their cattle, and of their houſhold, to the women and children, or to the old and infirm, they were accuſtomed to paſs their time in liſtleſs indolence, having little other enjoyment but what they derived from

from food or from ſleep*. That from ſuch diſpoſitions they found great delight in convivial entertainments, and were given to great exceſſes in eating and drinking, may eaſily be ſuppoſed. By the pleaſures of intoxication, they ſought to diſſipate the gloom of that languor and wearineſs with which they were oppreſſed, and to enliven the barren proſpect which the ordinary courſe of their thoughts and ſentiments was capable of preſenting to them. For the ſame reaſon they were addicted to games of hazard; inſomuch that perſons who had loſt their whole fortune at play would afterwards, it is ſaid, venture to ſtake their liberty; and having ſtill been unlucky, would voluntarily become the ſlaves of the winner*. The practice

" Quotics bella non ineunt, non multum venationibus, " plus per otium transigunt, dediti somno, ciboque. Fortis- " simus quisque ac bellicosissimus nihil agens, delegata do- " mus et penatium et agrorum cura fœminis senibusque, et " infirmissimo cuique ex familia, ipsi hebent mira diversi- " tate naturæ, cum iidem homines sic ament inertium et " oderint quietem." Tacit. de Mor. Germ. c. 15.

——" Diem noctemque continuare potando nulli probrum." Ibid. c. 22.

* Aleam (quod mirere) sobrii inter seria exercent, tanta lucrandi perdendique temeritate, ut cum omnia defecerunt, extremo

tice of gaming muſt have been carried to a high pitch, when faſhion, even among ſuch barbarians, had made it a point of honour to diſcharge a game-debt of that extraordinary nature. It is obſervable, that in countries where men have exhauſted the enjoyments ariſing from the poſſeſſion of great riches, they are apt to feel the ſame want of exerciſe and occupation, as in that ſimple age when they have not yet contracted thoſe habits of induſtry by which wealth is acquired; and they are forced to make uſe of the ſame expedient to deliver them from that *tædium vitæ*, which is the moſt oppreſſive of all misfortunes. The oppoſite extremes of ſociety appear in this reſpect to coincide; and exceſſive gaming is therefore the vice, not only of the moſt opulent and luxurious nations, but of the moſt rude and barbarous.

Among all the German nations, the Saxons, who appear to have been ſcattered over the pe-

extremo ac novissimo jactu de libertate et de corpore contendant. Victus voluntariam servitutem adit. Quamvis junior, quamvis robuſtior, adligari se ac venire patitur. Ea est in re prava pervicacia: ipsi fidem vocant. Tac. de Mor. Germ. c. 24.

ninſula

ninſula of Jutland, and along the neighbouring ſhores of the Baltick Sea, were the moſt fierce and barbarous, as they were moſt completely removed from that civility and improvement which every where attended the progreſs of the Roman arms. Their maritime ſituation, at the ſame time, had produced an early acquaintance with navigation, and had even qualified them to undertake piratical expeditions to ſeveral countries at a diſtance. They had, accordingly, long infeſted the coaſts of Britain and Gaul; inſomuch that in the former country it was found neceſſary to appoint a military officer, with a regular force, to guard againſt their depredations.

Making allowance, however, for ſuch differences as might ariſe from this peculiarity of ſituation, their character and manners were ſimilar to thoſe of the other inhabitants of Germany, and, in general, to thoſe of the wandering tribes of ſhepherds in every age or country.

Upon the whole, when we examine the accounts delivered by the beſt hiſtorians, concerning the ancient inhabitants of Germany, as well as the Saxons in particular, we find nothing,

nothing, either in their public or private inſtitutions, or in their habits and ways of thinking, which we can reaſonably ſuppoſe to have occaſioned any peculiarity in the government eſtabliſhed by the latter people in Britain. Whatever peculiarity therefore is obſervable in the Anglo-Saxon government, it muſt have ariſen from cauſes poſterior to the migration of that people into Britain; from the nature of the country in which they ſettled; from the manner in which their ſettlements were formed; or from other more recent events and circumſtances.

Some writers fondly imagine, that they can diſcover, in the political ſtate of the Saxons, while they remained in their native foreſts, the ſeeds of that conſtitution which grew up in England during the government of the Anglo-Saxon princes. With reſpect to thoſe innate principles of liberty which have been aſcribed to this people, it muſt be obſerved, that in proportion as mankind recede from civilized manners, and approach to the infancy of ſociety, they are leſs accuſtomed to authority, and diſcover greater averſion to every ſort of reſtraint or controul. In this ſenſe the

Saxons

Saxons may be ſaid to have poſſeſſed a ſtronger reliſh for freedom than many of the other German tribes; as the preſent Indians of America, who are mere hunters and fiſhers, diſcover a ſtill freer ſpirit than appeared among the Saxons. But as this love of liberty proceeds from the mere want of the common means of improvement, and from no original peculiarity of character, it is not likely to be retained by ſuch barbarians, after they have opportunities of improving their condition, by acquiring property, and by extending the connexions of ſociety. When the Saxons in Britain became as opulent as the German or Scythian tribes, who ſettled in other provinces of the Roman empire, there is no reaſon to believe, that in conſequence of their primitive poverty and barbariſm, they were with more difficulty reduced into a ſtate of ſubordination, and ſubmiſſion to civil authority. The anceſtors of almoſt every civilized people may be traced back to the moſt rude and ſavage ſtate, in which they have an equal title to be diſtinguiſhed, as men impatient of all reſtraint, and unacquainted with the commands of a ſuperior.

CHAP.

CHAP. III.

Settlement of the Saxons in Britain.

THE Saxons accepted with joy and alacrity the propoſals made to them by the Britons; and it appears to have been ſtipulated, that they ſhould immediately ſend a body of troops into Britain, to be employed in the defence of the country, and to receive a ſtated hire during the continuance of their ſervices*. In conſequence of this agreement, Hengiſt and Horſa, two brothers, and perſons of diſtinction among the Saxons, with about ſixteen hundred followers, landed in the iſle of Thanet, in the year 449; and having defeated the Picts and Scots, confined them, in a ſhort time, within their ancient boundaries. The Saxon troops, immediately after, were ſtationed by Voltigern partly upon the confines of

* Stillingfleet Orig. Brit.——Bede says, that the Saxons first took occasion to quarrel with the Britons, by demanding an increase of their *allowance*, to which he gives the name of *annona*. Hist. Eccles. lib. i. c. 15.

the

the northern wall, and partly upon the Kentiſh coaſt, the two places that had been uſually ſecured with garriſons under the late dominion of the Romans. In ſuch a ſituation theſe auxiliaries, who formed the principal ſtrength of the country, could hardly fail to perceive their own importance, and to entertain the deſign of extorting a permanent ſettlement from the inhabitants. With this view, Hengiſt is ſaid to have perſuaded the Britons to hire an additional number of his countrymen, as the only effectual means for ſecuring themſelves from the future incurſions of the enemy; and, upon an application for that purpoſe, was joined by a new body of Saxons, amounting to five thouſand men. By this reinforcement he found himſelf ſuperior to the diſjointed and unwarlike forces of the country. Having therefore ſecretly concluded a treaty of peace with the Picts and Scots, and pretending that the articles of the original agreement, with relation to the pay of his troops, had not been obſerved, he ventured to throw off the maſk, and openly to make war upon the Britons. His example was followed by other adventurers, among the ſame people, who, at the head of

different parties, allured by the hope of plunder, and of a new ſettlement, invaded the coaſts of Britain, and endeavoured to penetrate into the country. Their attempts were crowned with ſucceſs, and the moſt valuable part of the Iſland was at length reduced under their dominion. This great event, however, was not accompliſhed without a violent ſtruggle, nor in leſs than a hundred and ſeventy years; during which time many battles were fought, with various fortune. It is remarkable that, notwithſtanding their fears and puſillanimity, when firſt abandoned by the Romans, the Britons, in the courſe of their long-continued conteſt with the Saxons, defended themſelves with more obſtinate reſolution, than, upon the downfal of the Roman empire, was diſcovered by any of the other provinces, though ſupported by the armies of Rome. The want of any foreign aſſiſtance was, in all probability, the cauſe of this vigorous and ſpirited behaviour; as it called forth the exertion of their powers, and produced in them a degree of courage and diſcipline, which the provinces enjoying the protection of the Roman government were not under the ſame neceſſity of acquiring.

We

We have no full account of the circumſtances attending the ſettlement of the Saxons in Britain; but we may form an idea of the manner in which it was completed, from the general ſituation of the people, from the imperfect relations of this event by our early hiſtorians, and from the more diſtinct information that has been tranſmitted concerning the ſettlement of other German nations, in ſome of the Roman provinces upon the continent of Europe.

The followers of any particular leader having gained a victory, became the maſters of a certain territory, and enriched themſelves with the ſpoil of their enemies. Willing to ſecure what they had obtained, they were led afterwards to offer terms of accommodation to the vanquiſhed; with whom they appear, on ſome occaſions, to have made a formal diviſion of their land and other poſſeſſions. But even in thoſe caſes, where no expreſs treaty of this nature had been formed, the ſame effects were produced, from the mere ſituation of the combatants; and upon the concluſion of a war, the parties were underſtood to have the property of the reſpective diſtricts which they had been

able to occupy or to retain. Such of the Britons as had been made captives in war were doubtleſs, in conformity to the general practice of the ancient Germans, reduced into a ſtate of ſervitude; but thoſe who had eſcaped this misfortune reſided in the neighbourhood of the Saxons, and often maintained a friendly intercourſe with them.

The ambition, however, and avidity of theſe barbarians, incited them, at a future period, to renew their former hoſtilities; and theſe were generally followed by new victories, and by a farther extenſion of conqueſt. In this manner, after a long courſe of time, the country was completely ſubdued by theſe invaders; and the ancient inhabitants were, according to accidental circumſtances, partly degraded into a ſtate of ſlavery, and partly, by particular treaties, and by long habits of communication, incorporated with the conquerors.

From the declamatory repreſentations of ſome early annaliſts, the greater part of hiſtorians have been led to ſuppoſe, that ſuch of the Britons as eſcaped captivity were either put to death by their barbarous enemies, or, diſdaining ſubmiſſion, and expecting no mercy, retired

retired into Wales, or withdrew into the country of *Armorica* in France, to which, from them, the name of *Bretagne* has been given. An acute and induſtrious antiquary, Mr. Whitaker, has lately ſhown, I think in a ſatisfactory manner, that this extraordinary ſuppoſition is without any ſolid foundation. That many of the Britons were at that period ſubjected to great hardſhips, and, in order to ſave themſelves from the fury of their enemies, were even obliged to quit their native country, may be eaſily believed: but that the Saxons were animated with ſuch uncommon barbarity, as would lead them, in direct oppoſition to their own intereſt, to root out the ancient inhabitants, muſt appear highly improbable. Of the total extirpation of any people, by the moſt furious conquerors, the records of well authenticated hiſtory afford not many examples. It is known, at the ſame time, that no ſuch cruelty was exhibited by any of the German nations who conquered the other provinces of the Roman empire; and it muſt be admitted, that the ſituation of all thoſe nations was very much the ſame with that of the Saxons, as alſo that they were a people in all reſpects of

ſimilar manners and cuſtoms. There is even complete evidence that, in ſome parts of the Iſland, the Britons were ſo far from being extirpated, that they were permitted to retain a certain proportion of the landed property; and it is remarkable, that this proportion, being a third part of the whole, was the ſame with that retained by the ancient inhabitants in ſome of thoſe provinces, upon the continent of Europe, which were conquered by the other German tribes. Though, in other caſes, the veſtiges of ſuch early tranſactions have not been preſerved, it is highly probable that a ſimilar diviſion of the land was made, either by expreſs contract, or by tacit agreement. There can be no reaſon to believe that the ſame Saxons would, in one part of the Iſland, exhibit ſuch moderation and humanity to the vanquiſhed people, and in another, ſuch unprecedented ferocity and barbarity.

It is further to be obſerved, that the language which grew up in Britain after the ſettlement of the Saxons, and in which a large proportion of the *Britiſh* and the *Latin* tongues were incorporated with the *Saxon*, affords a ſufficient proof that the inhabitants were compounded of

of the different nations by whom theſe languages were ſpoken.

When the Saxons invaded Britain, they were entirely a paſtoral people; but as they came into a country which had been long cultivated, they could ſcarcely fail to acquire very rapidly a conſiderable knowledge of agriculture. Having obtained a quantity of land that was formerly employed in tillage, and having procured a proportionable number of ſervants, already acquainted with the various branches of huſbandry, it may eaſily be imagined that they would avail themſelves of this favourable ſituation, for the proſecution of an employment ſo conducive to their comfortable ſubſiſtence.

In conſequence of a general attention to agriculture, they muſt have been induced to quit the wandering life; ſince, in order to practiſe the employment of a farmer with any advantage, a continued reſidence upon the ſame ſpot is neceſſary. In the occupancy and appropriation of landed eſtates, thoſe perſons who had been moſt connected in war were moſt likely to become neighbours; and every little knot of kindred and friends were com-

monly led to build their houſes together, that they might be in readineſs to aſſiſt one another in their labour, and to unite in defending their poſſeſſions. The villages of German ſhepherds were thus converted into villages of huſbandmen, which, in proportion to the progreſs of their arms, and to their advances in improvement, were gradually enlarged and ſpread over the country. It ſhould ſeem that, upon the firſt ſettlement of the Saxons, the whole people were diſtributed into little ſocieties of this kind; and no individual was ſo opulent, that he could expect to live in ſecurity, without maintaining an alliance and intimate communication with others. This cuſtom of reſorting to villages, introduced by neceſſity, in times of extreme barbariſm and diſorder, is even at preſent retained by many of the farmers in England; although, from a total change of manners and circumſtances, it is evident that a ſeparate reſidence, upon their different farms, would often be much more convenient.

While the Saxons, by their intercourſe with a more civilized people, were thus excited to a conſiderable improvement of their circumſtances, the Britons were, from an oppoſite ſituation,

tion, degraded in the ſame proportion, and continued to ſink in ignorance and barbariſm. Engaged in a deſperate conflict, in which every thing dear to them was at ſtake, and having to cope with an enemy little practiſed in the refinements of humanity, they were obliged, in their own defence, to retaliate thoſe injuries which they were daily receiving; and by the frequent exerciſe of depredation, they became inured to rapine and injuſtice. The deſtructive wars, in the mean time, which were inceſſantly kindled, and which raged with ſo much violence in every quarter of the country, were fatal to the greater part of its improvements. The numerous towns which had been raiſed under the protection and ſecurity of the Roman government, and which now became the uſual refuge of the weaker party, were often ſacked by the victorious enemy, and after being gradually depopulated, were at length either laid in ruins, or left in the ſtate of inſignificant villages. In thoſe times of univerſal terror and confuſion, the ancient ſchools and ſeminaries of learning were abandoned, and every perſon who cultivated the arts ſubſervient to luxury and refinement, was

forced to deſert ſuch uſeleſs occupations, and betake himſelf to employments more immediately requiſite for preſervation and ſubſiſtence. In the courſe of two centuries, within which the conqueſt of the more acceſſible and valuable parts of Britain was completed, the monuments of Roman opulence and grandeur were entirely eraſed; and the Britons who remained in the country, and who retained their liberty, adopted the ſame manner of life with their Saxon neighbours, from whom they were no longer diſtinguiſhable, either by the places of their reſidence, or by their uſages and political inſtitutions.

Thoſe conquerors of Britain who received the general appellation of Saxons had iſſued from different parts of the German coaſt, at ſome diſtance from one another, and belonged to different tribes or nations: they have been divided, by hiſtorians, into three great branches, the *Angles*, the *Jutes*, and the *Saxons*, properly ſo called. As the leaders of the ſeveral parties belonging to any of theſe diviſions poſſeſſed a ſeparate influence over their own adherents, and proſecuted their enterpriſes in different parts of the country, ſo they naturally

rejected

rejected all ideas of ſubordination, and endeavoured to acquire a regal authority; the reſult of which was, that, after various turns of fortune, no leſs than ſeven independent ſtates, each under its own particular monarch, were at length eſtabliſhed.

The followers of Hengiſt and Horſa, compoſed of Jutes, acquired a ſettlement in the eaſt corner of the Iſland, and eſtabliſhed their dominion in what is now the county of Kent. Different parties of the proper Saxons occupied a much larger territory, and laid the foundations of three different kingdoms. Thoſe who, from their ſituation, were called the Southern Saxons, eſtabliſhed themſelves in the counties of Suſſex and Surrey; the Weſt Saxons extended their authority over the counties to the weſtward, along the ſouthern coaſt; and the Eaſt Saxons took poſſeſſion of Eſſex, Middleſex, and a conſiderable part of Hertfordſhire. The Angles were ſtill more numerous, and the territories which they occupied were much more extenſive. By them was formed the kingdom of the Eaſt Angles, in the counties of Cambridge, Norfolk, and Suffolk; that of Northumberland, extending over all

all the country which theſe barbarians had ſubdued, from the Humber to the Frith of Forth; and that of Mercia, comprehending the inland counties, which were in a manner included by the other kingdoms of the Heptarchy.

In the weſtern part of the Iſland, from the Land's-End to the Frith of Clyde, the ancient inhabitants were ſtill able to maintain their independence; and in this large tract of country were erected four Britiſh principalities or kingdoms; thoſe of Cornwall, of South Wales, of North Wales, and of Cumberland. To the North of the Friths of Forth and Clyde the Picts and Scots retained their ancient poſſeſſions.

The changes produced in the manners and cuſtoms of the Saxons, by their ſettlement in Britain, were ſuch as might be expected, from the great change of ſituation which the people experienced, in paſſing from the ſtate of ſhepherds to that of huſbandmen. As in following the employment of the latter, they neceſſarily quitted the wandering life, and took up a fixed reſidence, they were enabled to acquire *property in land*; with which it is probable they were formerly unacquainted. The introduction

introduction of landed property among mankind has uniformly proceeded from the advancement of agriculture, by which they were led to cultivate the ſame ground for many years ſucceſſively; and upon the principle that every man has a right to enjoy the fruit of his own labour, became entitled, firſt, to the immediate crops they had raiſed, and afterwards to the future poſſeſſion of the ground itſelf, in order that they might obtain the benefit of the improvement which their long cultivation had produced. In this appropriation, of ſo great importance to ſociety, the Saxons in Britain were undoubtedly ſtimulated, and inſtructed, from the cultivated ſtate of the country, as well as from the example of the people whom they had ſubdued.

This alteration in their circumſtances had neceſſarily a mighty influence upon the conduct of their military operations. As a great part of their property was now incapable of being tranſported, the inhabitants of each village were induced to fortify, in ſome degree, the place of their abode, for the preſervation of their moſt valuable effects; and therefore, in going out to meet an enemy, inſtead of carrying along with them their cattle, and other moveables,

moveables, and being accompanied by their wives and children, as well as by the aged and infirm (the uſual practice in the paſtoral life) none but the actual warriors had occaſion to take the field. The immediate plunder, therefore, ariſing from a victory, was rendered more inconſiderable; and even this the victors were commonly obliged to ſecure at home, before they could conveniently undertake a new enterprize. Thus, after the ſettlement of the Saxons in Britain, they were leſs in a condition to carry on wars at a great diſtance; and they appear to have laid aſide, for the moſt part, their foreign piratical expeditions.

The permanent reſidence of the people tended likewiſe to open a regular communication between different villages; the inhabitants of which, by remaining conſtantly in the ſame neighbourhood, were led by degrees to contract a more intimate acquaintance. From the acquiſition of landed poſſeſſions, which by their nature are leſs capable than moveables of being defended by the vigilance and perſonal proweſs of the poſſeſſor, the neceſſity of the public interpoſition, and of public regulations for the ſecurity of property, muſt have been more

more univerſally felt. From theſe cauſes, it is natural to ſuppoſe that the connections of ſociety were gradually multiplied, and that the ideas of juſtice, as well as of policy and government, which had been entertained by the primitive Saxons, were conſiderably extended and improved.

The introduction of landed property contributed, on the other hand, to increaſe the influence and authority of individuals, by enabling them to maintain upon their eſtates a greater number of dependents than can be ſupported by perſons whoſe poſſeſſions are merely moveable. The heads or leaders of particular families were thus raiſed to greater conſideration; and, in the reſpective communities of which they were members, obtained more completely the excluſive direction and management of public affairs. The influence of the great leader, or prince, by whom they were conducted in their common expeditions, was proportioned, in like manner, to his private eſtate, and extended little farther than to his own tenants; for which reaſon, in the ſeveral kingdoms of the Heptarchy, the ſovereign poſſeſſed a very limited authority, and the principal

principal powers of government were lodged in a *Wittenagemote*, or national council, compoſed of the independent proprietors, or leading men in the ſtate.

Although the monarchs of theſe different kingdoms claimed an independent ſovereignty, yet, in their ſtruggles with the Britons, they often procured aſſiſtance from one another, and were combined againſt the ancient inhabitants of the country, their common enemies. The direction of their forces was, on thoſe occaſions, committed to ſome particular monarch, who, in conducting their joint meaſures, was frequently under the neceſſity of calling a wittenagemote, or great council, from all the confederated kingdoms. Thus the idea of a permanent union among all the kingdoms of the Heptarchy, and of a leader, or chief magiſtrate, at the head of that large community, together with a ſet of regulations extending to all its members, was gradually ſuggeſted: according to the opulence or abilities of the different Saxon princes, they were, by turns, promoted to that ſupreme dignity; which became, of courſe, the great object of their ambition, and the ſource of thoſe violent animoſities

animoſities which, for a period of about two hundred years, continually ſubſiſted among them. The moſt powerful of the ſtates belonging to this confederacy were thoſe of Weſſex, Mercia, and Northumberland, to which the reſt were gradually reduced into a kind of ſubordination; till at length, about the year 827, the ſeveral kingdoms of the Heptarchy were ſubdued by Egbert, the king of the Weſt Saxons, who tranſmitted to his poſterity the ſovereignty of thoſe extenſive dominions. The ſame prince extended his authority over all the Britons on the ſouth ſide of the Briſtol channel, and became maſter of a conſiderable part of Wales, and of the Cumbrian kingdom. From this time the diſtinctions among the different Saxon ſtates were in a great meaſure aboliſhed, and the ſeveral territories, united under Egbert, received the general name of England; as the people, from the union of the two principal nations, and in contradiſtinction to their countrymen in Germany, were called the Anglo-Saxons.

Several circumſtances appear to have contributed to the accompliſhment of this great revolution. With the bravery and military accom-

accompliſhments uſual among the chiefs and princes of that age, Egbert, who had been educated in the court of Charles the great, is ſaid to have united an uncommon degree of political knowledge and abilities. His own kingdom, ſituated along the ſouthern coaſt of Britain, was probably the moſt improved, if not the moſt extenſive, of thoſe which had been erected by the Anglo-Saxons. In almoſt all the other kingdoms of the Heptarchy, a failure of the lineal heirs of the crown had given riſe, among the principal nobility, to a conteſt about the ſucceſſion: Northumberland, in particular, was weakened by inteſtine diſorders, and in no condition to reſiſt a foreign power; ſo that, by the conqueſt of Mercia, the only other independent ſtate, the king of Weſſex was left without a competitor, and found no difficulty in eſtabliſhing an univerſal ſovereignty.*

* It muſt not however be ſuppoſed that the power of all the kings of the Heptarchy was at this period entirely deſtroyed; they retained a ſubordinate authority, founded upon their great property. The princes of Northumberland and Mercia ſtill retained the title of *king*; and in the reign of Alfred we find them ſtill claiming independence.—See William of Malmsbury.

There

There can be no doubt that the reduction of all theſe different kingdoms into one monarchy contributed to improve the police of the country, and to civilize the manners of the people. The ſcene of anarchy and violence which was conſtantly exhibited during the conqueſt of Britain by the Saxons was incompatible with any attention to the arts of civil life, and in a great meaſure extinguiſhed the remains of Roman improvement. The beginning of the ſeventh century, which falls about the concluſion of that period, may, therefore, be regarded as the æra of greateſt darkneſs and barbariſm in the modern hiſtory of Britain. The advances, however, that were made, even after this period had elapſed, were very ſlow and gradual. So long as the country was divided into a number of petty ſtates, independent of each other, and therefore often engaged in mutual hoſtilities, the perſons and property of individuals were not ſecured in ſuch a manner as to encourage the exerciſe of uſeful employments.

It appears, indeed, that the monarchs in ſeveral of thoſe kingdoms were anxious to prevent diſorders among their ſubjects, and, with

the aſſiſtance of their national councils, made a variety of ſtatutes, by which the puniſhment of particular crimes was defined with great exactneſs. Such were the laws of Ethelbert, and ſome of his ſucceſſors, in the kingdom of Kent; thoſe of Ina, the king of the Weſt Saxons; and Offa, of the Mercians.* Theſe regulations, however, were probably of little avail, from the numerous independent ſtates into which the country was divided; becauſe an offender might eaſily eſcape from juſtice, by taking ſanctuary in the territories of a rival or hoſtile nation; but when the different kingdoms of the Heptarchy were united under one ſovereign, private wars were more effectually diſcouraged, juſtice was ſomewhat better adminiſtered, and the laws eſtabliſhed throughout the Anglo-Saxon dominions were reduced to greater uniformity. We are not, however, to imagine that, from this period, the ſame regulations in all reſpects were extended over the whole Engliſh monarchy. The ſyſtem of private law, being formed in good meaſure by

* See the Collections of the two former, in Wilkins Leg. Anglo-Sax.—The laws of king Offa have not been preſerved.

long

long uſage, was neceſſarily different in different diſtricts; and the cuſtoms which prevailed in the more conſiderable had obtained a currency in the ſmaller ſtates of the Heptarchy. Thus we find that the law of the Weſt Saxons was extended over all the ſtates on the ſouth ſide of the Thames,* while the law of the Mercians was introduced into ſeveral territories adjacent to that kingdom.† In a ſubſequent period a third ſet of regulations, probably a good deal different from the two former, was adopted in the northern and eaſtern parts of the country.

* Called Westsaxenlaga.

† Called Mercenlaga. The inhabitants were denominated, from the kind of law which they observed. See Ran. Higden Polychron.—In France the Pays de Droit écrit and the Pays des Coutumes, were distinguished from a similar circumstance.

CHAP. IV.

Similarity in the Situation of the Anglo-Saxons, and of the other Barbarians who ſettled in the Provinces of the Weſtern Empire.—How far the State of all thoſe Nations differed from that of every other People, ancient or modern.

DURING the ſame century in which the Anglo-Saxons began their ſettlements in England, the other provinces of the weſtern empire were invaded by a multitude of rude nations, from Germany and the more eaſterly parts of the world. Allured by the proſpect of booty, theſe barbarians had long made accidental incurſions upon the frontier provinces; and having, by repeated ſucceſſes, diſcovered the weakneſs of the Roman ſtate, they at length endeavoured to gain more ſolid advantages, by ſettling in the countries which they had ſubdued. The Roman emperors were not only obliged to ſubmit to theſe encroachments, but were even forced, in many caſes, to enter into an alliance with thoſe invaders, to employ them

as

as auxiliaries in the armies of Rome, and to beſtow upon them landed poſſeſſions, upon condition of their defending the country. But theſe were merely temporary expedients, which in the end contributed to increaſe the power of the barbarians. Different ſwarms of theſe people advancing in ſucceſſion, and puſhing each other forward in queſt of new poſſeſſions, continued to penetrate into the Roman dominions, and at laſt entirely overran and diſmembered the weſtern provinces. The Franks, the Burgundians, and the Wiſigoths ſettled in Gaul. Another branch of the Wiſigoths eſtabliſhed their dominion in Spain. Africa became a prey to the Vandals. Italy, for a long time the center of Roman wealth, and of Roman luxury, invited, in a particular manner, the attacks of poverty and barbariſm; and after it had ſuffered from the ſucceſſive inroads of many different nations, a great part of the country was ſubjected to the Oſtrogoths, and in a ſubſequent period, to the Lombards.

As the original manners and cuſtoms of all theſe nations were extremely analogous to thoſe of the Saxons in England, and as their conqueſt and ſettlement in the weſtern empire

were completed nearly in the ſame manner, it was to be expected that they would fall under a ſimilar government. It has happened, accordingly, that their political inſtitutions are manifeſtly formed upon the ſame plan, and preſent, to the moſt careleſs obſerver, the ſame aſpect and leading features, from which, as in the children of a family, their common origin may clearly be diſcovered. They differ, no leſs remarkably, from all the other ſyſtems of policy that have been recorded in ancient or modern hiſtory. It may be worth while to examine, more particularly, the cauſes of the uniformity, ſo obſervable among all thoſe nations, and of the peculiarities, by which they are ſo much diſtinguiſhed from the other inhabitants of the world. In this view, there occur five different circumſtances that ſeem to merit attention.

1. The ſettlement of the barbarous nations, upon the weſtern continent of Europe, as well as in England, was effected by the gradual ſubjection of a more civilized people, with whom the conquerors were at length completely incorporated.

The rude and ignorant tribes who ſubdued the

the Roman provinces, were too little connected with one another, and too little accuſtomed to ſubordination, to unite in proſecuting any regular plan of conqueſt; but, according as they were excited by provocation, or met with any encouragement, they made occaſional inroads, with different degrees of ſucceſs; and when they had overrun a particular diſtrict, they commonly choſe to remain in the country, and frequently concluded a treaty of peace with the ancient inhabitants.

Having, on thoſe occaſions, become maſters of a large territory, which had been long occupied in tillage, and having, by repeated victories, obtained a number of captives, whom they reduced into ſlavery, they found it an eaſy matter to employ their ſlaves in cultivating the land which they had procured. In this ſituation they ſoon made ſuch progreſs in agriculture, as determined them to relinquiſh their wandering life, and apply themſelves to the acquiſition of ſeparate landed eſtates. By their intercourſe, at the ſame time, with ſuch of the old inhabitants as retained their freedom, they neceſſarily acquired a variety of knowledge, and became acquainted with many of the com-

mon arts of life to which they had for been ſtrangers.

It was not to be expected, however, that theſe barbarians would long remain at reſt; or that they ſhould have any difficulty in finding pretences for quarrelling with a people whom they meant to ſtrip of their poſſeſſions. In a courſe of time, therefore, new animoſities broke out, which were followed by repeated military enterprizes, attended with ſimilar circumſtances; till at laſt, by ſucceſſive extenſions of territory, and after ſeveral centuries had elapſed, the whole of the weſtern empire was diſmembered, and reduced under the power of theſe invaders.

The events by which this great revolution was accompliſhed, could not fail to produce very oppoſite effects, upon the ancient inhabitants of the country, and upon the new ſettlers. The former, while, in conſequence of the violence and diſorder which prevailed, and of their intercourſe with the barbarians, they ſunk very rapidly into poverty and barbariſm, communicated in their turn to the latter a few great lines of that cultivation, which had not been entirely effaced among themſelves. In the end,

thoſe

thoſe two ſets of people were entirely blended together; and their union produced ſuch a compound ſyſtem of manners and cuſtoms, as might be expected to reſult, from the declining ſtate of the one, and the riſing ſtate of the other.

The deſtruction of the Roman provinces ſtruck out, in this manner, a ſudden ſpark of improvement, which animated their victorious enemies, and quickly pervaded the new ſtates that were founded upon the ruins of the weſtern empire. In the earlieſt accounts of the modern kingdoms of Europe, we find the people, though evidently retaining very deep marks of their primitive rudeneſs, yet certainly much advanced beyond the ſimple ſtate of the ancient Germans. Their huſbandry, no doubt, continued for ages in a very low and imperfect condition, inſomuch that extenſive territories were often permitted to lie waſte and deſolate; yet ſuch as it was, it procured the neceſſaries of life in greater plenty, and produced of courſe a more univerſal attention to its conveniencies. Their permanent reſidence in one place gave room and encouragement to the exerciſe of different employments, from which, during their

their former migrations, they were in a great meaſure excluded. Their houſes were built of more laſting materials, and rendered more commodious, than the moveable huts in which they formerly ſheltered themſelves. Particular perſons, having acquired very great landed eſtates, were enabled, by the remaining ſkill of Roman artificers, to erect ſuch fortreſſes as were ſufficient to defend them from the ſudden incurſions of an enemy; and lived, in ſuitable magnificence, at the head of their tenants and domeſtics. The numerous, and opulent towns, which had been ſcattered over the dominions of Rome, though they ſuffered greatly in the general wreck of the empire, were not, however, univerſally deſtroyed or deſerted; and ſuch of them as remained, were frequently occupied and inhabited by the leaders of the conquering tribes. In theſe, and even throughout the whole of the country, that policy, which had become familiar to the old inhabitants, was, in many reſpects, continued; and in the early codes of laws, collected by the princes of the barbarous nations who ſettled in the weſtern empire, we often diſcover a cloſe imitation of the Roman juriſprudence.

In

In theſe particulars, the ſituation of the modern ſtates of Europe appears to have been a good deal different from that of every other nation, of whom any accounts have been tranſmitted to us. In many parts of the world, the rude inhabitants have continued unconnected with any other people more improved than themſelves; and have therefore advanced very ſlowly in the knowledge of arts, as well as in the progreſs of the ſocial life. From the remoteſt period of antiquity, the Arabs and Tartars have remained, for the moſt part, in a paſtoral ſtate; and are ſtill almoſt entirely ignorant of huſbandry. The Indians of America ſtill derive their principal ſubſiſtence from hunting and fiſhing; and are in a great meaſure ſtrangers to the invention of taming and rearing cattle. In early ages men are deſtitute of ſagacity and reflection, to make uſe of thoſe diſcoveries which fortune may throw in their way; and their improvement is much retarded by thoſe habits of ſloth which, being foſtered by the primitive manner of life, are not to be overcome without extraordinary incitements to labour and application.

Among the inſtances, preſerved in hiſtory, of

of nations who have acquired a connection with others, by means of a conqueſt, we meet with none that are ſimilar to thoſe exhibited in Europe, during the period which we are now conſidering. The conqueſt in Aſia, by Alexander and his ſucceſſors, was that of one opulent and civilized people over another; and produced no farther alteration in the Greek ſtates, but that of inſpiring them with a taſte of Aſiatic luxury and extravagance.

The firſt military efforts of the Romans were employed in ſubduing the ſmall neighbouring ſtates of Italy, whom they found in the ſame barbarous condition with themſelves; and they had become a great nation, firmly eſtabliſhed in their manners and political ſyſtem, before they directed their forces againſt the refined and cultivated parts of the world. Beſides, the Roman virtue diſdained, for a long time, to imitate the talents and accompliſhments of the people whom they had ſubdued.

China, and ſome other of the great Aſiatic kingdoms, have been frequently overrun and conquered by ſeveral hordes of Tartars, accidentally combined under a great leader: but the conqueſt, in theſe caſes, was not carried on

ſlowly

ſlowly and gradually, as in the provinces of the weſtern empire: it was completed by one or two great and rapid victories; ſo as, on the one hand, to prevent the learning and civilization of the vanquiſhed people from being deſtroyed by a long-continued courſe of war and devaſtation; and, on the other, to prevent the conquerors, by long neighbourhood and acquaintance, from being incorporated with the former inhabitants, in one common ſyſtem of manners, cuſtoms, and inſtitutions. The final ſucceſs, therefore, of the victorious army, produced no farther revolution, than by ſuddenly advancing their general, together, perhaps, with ſome of his principal officers, to the head of a great and civilized empire; of which the native country of the conquerors became only a tributary province.

The ſame obſervation is applicable to the dominion acquired by Mahomed, and ſome of his immediate ſucceſſors; which was not eſtabliſhed by a gradual ſettlement of Arabian tribes, in the rich countries of Aſia; but by a rapid conqueſt, that gave riſe to no intimate coalition of the victors with thoſe who ſubmitted to the Mahometan yoke. No other change,

change, therefore, was produced in the ſtate of the conquered nations, than what aroſe from ſubjecting them to a new religion, and to a new ſet of monarchs; while the wandering Arabs, the original followers of Mahomed, remained, for the moſt part, in their primitive ſtate of barbariſm. The conqueſt of the Saracens, and of the eaſtern empire, by the Turks, had a greater reſemblance to the progreſſive inroads of thoſe who conquered the weſtern provinces; but it was far from proving equally deſtructive to the former civilization of the conquered people, or from reducing them to the level of their barbarous conquerors.

2. The German or Gothic nations, who ſettled in the weſtern part of Europe, were enabled, in a ſhort time, to form kingdoms of greater extent, than are uſually to be found among people equally rude and barbarous.

Of all the arts which contribute to improve or to embelliſh ſociety, that of government requires the moſt enlarged experience and obſervation; for which reaſon, its progreſs towards perfection is proportionably gradual and ſlow. In that ſimple age, in which labour is not yet divided among ſeparate artificers, and in which the

the exchange of commodities is in a great meaſure unknown, individuals, who reſide at a diſtance from one another, have no occaſion to maintain an intimate correſpondence, and are not apt to entertain the idea of eſtabliſhing a political connection. The inhabitants of a large country are then uſually parcelled out into ſeparate families or tribes, the members of which have been led, by neceſſity, to contract habits of living together, and been reduced under the authority of that leader who is capable of protecting them. Theſe little communities are naturally independent, as well as jealous of one another; and though, from the dread of a common enemy, they are ſometimes obliged to combine in a league for mutual defence, yet ſuch combinations are generally too caſual and fluctuating to be the foundation of a comprehenſive and permanent union.

But thoſe barbarians who conquered the weſtern empire were quickly induced, and enabled, to form extenſive aſſociations; partly, from the circumſtances attending the conqueſt; and partly, from the ſtate of the country in which they formed their ſettlements.

With

With reſpect to the circumſtances attending their conqueſt, it is to be obſerved, that their tribes were far from being large or numerous, and that they overran and ſubdued a very large tract of country; in conſequence of which, the members of the ſame tribe were enabled to occupy great landed eſtates, and came to be ſettled at a proportionable diſtance from one another. Individuals who had belonged to a ſmall community, and who had been accuſtomed to fight under the ſame leader, were thus diſperſed over an extenſive territory; and, notwithſtanding this change in their ſituation, were naturally diſpoſed to retain their former connections and habits. The notion of uniting under a ſingle chief, which had been eſtabliſhed among the members of a wandering tribe of ſhepherds, continued, therefore, to operate upon the ſame people, after they had acquired ample poſſeſſions, and had reduced multitudes under their dominion.

The extent of the kingdoms, erected by thoſe barbarous nations, was likewiſe affected by the ſtate of each Roman province, in which their ſettlements were made.

As

As every Roman province conſtituted a part of the whole empire; ſo it formed a diſtinct ſociety, influenced by national views, and directed by a ſeparate intereſt. Among the inhabitants of the ſame province, united by their local ſituation, by the ties of friendſhip and acquaintance, and even by that common ſyſtem of oppreſſion to which they were ſubject, a regular intercourſe was conſtantly maintained. Thoſe who lived in villages, or in the open country, carried on a variety of tranſactions with the ſeveral towns in the neighbourhood, where they found a market for their goods, and were ſupplied with thoſe conveniencies which they required. The inhabitants of theſe towns, and of the whole province, were, at the ſame time, cloſely connected with the capital, where the governor reſided in a kind of regal pomp and magnificence, and directed the various wheels and ſprings of adminiſtration. Here the public money, accumulated from different parts, was again diſtributed through the various channels of government; and hither men of all deſcriptions, the poor and the rich, the idle and the induſ-

trious, were attracted from every quarter, by the views of profit, or pleaſure, or of ambition.

The changes which at different periods were made in the political conſtitution of Rome, produced no great alteration, as has been already obſerved, either in the extent or condition of her provincial governments. The ancient boundaries of the provinces appear to have been generally retained under the later emperors; though, in order to ſecure the public tranquillity, they were often ſubdivided into particular diſtricts, which were put under the direction of ſubordinate officers. The connections, therefore, between the ſeveral parts of the ſame province, were gradually ſtrengthened from the length of time during which they had ſubſiſted.

As, by the conqueſt of thoſe countries, the ancient inhabitants were not extirpated, it is natural to ſuppoſe that their former habits of intercourſe were not obliterated and forgotten; but, on the contrary, were in ſome degree communicated to the conquerors. They who had lived under the ſame government were ſtill diſpoſed to admit the authority of a ſingle perſon,

perſon, and to remain in that ſtate of union and ſubordination to which they had been accuſtomed. Particular chiefs having occupied the remaining towns belonging to a Roman province, were of courſe rendered maſters of the adjacent territory; and he who had ſet himſelf at the head of the moſt powerful diſtrict, was in a fair way of becoming ſovereign of the whole.

It may alſo be worthy of notice, that as the conquering tribes adopted a number of the Roman inſtitutions, their principal conductor was frequently in a condition to avail himſelf of that authority, however declining, which the Roman government continued to maintain; and by aſſuming, or obtaining, the dignity which had belonged to the chief magiſtrate of a province, was enabled with greater facility to extend his dominion over the territories which had formerly acknowledged the juriſdiction of that officer. Thus we find that Clovis, who conquered a great part of Gaul, was, near the end of his reign, inveſted with the title of *conſul*, and probably with that of *pro-conſul*, by the emperor Anaſtaſius; and that the poſterity of Clovis were at the pains

to procure, from the emperor Juſtinian, a reſignation of all the rights of the empire over that nominal branch of his dominions *.

In like manner Theodoric, the king of the Oſtrogoths, who had been inveſted, in the eaſtern empire, with the title of *patrician* and *conſul*, and who had obtained for himſelf and his followers a ſettlement in Thrace, was afterwards commiſſioned by the emperor Zeno to conquer Italy, and take poſſeſſion of the country †.

From theſe cauſes, countries at a great diſtance from one another were forced into a ſort of political union: and the boundaries of a modern kingdom came, in moſt caſes, to be nearly of the ſame extent with thoſe of an ancient Roman province.

As Italy, which comprehended the numberleſs villas, and highly-cultivated pleaſure grounds, belonging to the opulent citizens of Rome, was the object of more attention than thoſe parts of the empire which lay at a greater diſtance, it was early ſubjected to a more ac-

* Hiſt. de l'Etabliſſement de la Mon. Fran. par l'Abbe Du Bos. liv. 4. ch. 18. liv. 5. ch. 7.

† Ibid. liv. 4. ch. 3.

curate

curate police, and divided into ſmaller diſtricts. It was diſtributed, by Auguſtus, into eleven *regions*; and in the time of the emperor Adrian that country, together with Sicily, Sardinia, and Corſica, included no leſs than ſeventeen diviſions. The ſmallneſs of the diſtricts into which it was thus broken by the Roman government had, no doubt, an influence upon the new arrangements which it underwent from the invaſion of the barbarians; and made it fall more eaſily into a number of petty ſtates, under the ſeveral dukes, or nobles, who aſſumed an independent authority.

In England, though the moſt part of the territories which had compoſed the ancient Roman province were at laſt united in one kingdom, yet this union was effected more ſlowly, and with greater difficulty, than in many of the other European countries. The ſettlement of the Anglo-Saxons was produced in a different manner from that of the other German nations who ſettled upon the continent of Europe. As the expeditions of the latter were carried on, for the moſt part, by land, it was uſual for the whole of a tribe or nation to advance in a body, and after they

had defeated the Roman armies, to ſpread themſelves over the extenſive territory which fell under their dominion. The original connections, therefore, among the individuals of the conquering nation, co-operated with the circumſtance of their ſettling in the ſame province, to facilitate their reduction, either by conqueſt or confederacy, under one ſupreme leader. The naval incurſions of the Anglo-Saxons were, on the other hand, made by ſmall detached parties, collected occaſionally by any ſingle adventurer, who, for the ſake of a precarious ſettlement, was willing to relinquiſh his kindred and acquaintance. The followers of every ſeparate leader were therefore too inconſiderable to occupy great landed poſſeſſions; and as they invaded England at different times, and in different places, with ſcarce any previous concert, and with little attachment to one another, they diſcovered ſo much the ſtronger diſpoſition to remain in ſeparate ſtates, and to preſerve their primitive independence. From theſe circumſtances, we may account for the diviſion of England into ſo many independent kingdoms; which were not reduced under one monarch till between three

three and four centuries after the first settlement of those invaders.

3. The great extent of the kingdoms that were formed upon the ruins of the western empire, together with the rudeness of the people by whom they were established, appears to have occasioned that system of feudal tenures, which is commonly regarded as the most distinguishing peculiarity in the policy of modern Europe.

The disposition to theft and rapine, so prevalent among rude nations, makes it necessary that the members of every family should have a watchful eye upon the conduct of all their neighbours, and should be constantly upon their guard to preserve their persons from outrage, and their property from depredation. The first efforts of civil government are intended to supersede this necessity, by punishing such offences, and enabling the individuals of the same community to live together in peace and tranquillity. But these efforts, it is evident, are likely to be more effectual in a small state than in a large one; and the public magistrate finds it much more difficult to extend and support his authority over a multitude

of individuals, diſperſed through a wide country, than over a ſmall number, confined to a narrow diſtrict. It is for this reaſon that government has commonly been ſooner eſtabliſhed, as well as better modelled, in communities of a moderate ſize, than in thoſe which comprehend the inhabitants of an extenſive region.

In proportion to the great number of people, and the great extent of territory, in each of the modern European kingdoms, the advances of authority in the public were ſlow, and its capacity of reſtraining violence and diſorder was limited. The different families of a kingdom, though they acknowledged the ſame ſovereign, and were directed by him in their foreign military enterprizes, were not, upon ordinary occaſions, in a ſituation to feel much dependence upon him. Acquiring great landed poſſeſſions, and reſiding at a diſtance from the capital, as well as in places of difficult acceſs, they were often in a condition to ſet the whole power of the crown at defiance; and diſdaining to ſubmit their quarrels to the determination of the civil magiſtrate, they aſſumed a privilege of revenging with their own

own hands the injuries or indignities which they pretended to have ſuffered. When not employed, therefore, in expeditions againſt a public enemy, they were commonly engaged in private hoſtilities among themſelves; from the frequent repetition of which there aroſe animoſities and feuds, that were only to be extinguiſhed with the life of the combatants, and that, in many caſes, were even rendered hereditary. In ſuch a ſtate of anarchy and confuſion, the ſtrong were permitted to oppreſs the weak; and thoſe who had moſt power of hurting their neighbours, were the moſt completely ſecured from the puniſhment due to their offences.

As the individuals of a nation were thus deſtitute of protection from government, they were under the neceſſity of defending themſelves, or of ſeeking protection from one another; and the little ſocieties compoſed of near relations, or formed accidentally by neighbourhood and acquaintance, were obliged to unite, in the moſt intimate manner, to repel the attacks of their numerous enemies. The poor were forced to ſhelter themſelves under the influence and power of the rich; and the latter found

found it convenient to employ a great part of their wealth, in order to obtain the conſtant aid and ſupport of the former. The head of every family was commonly ſurrounded by as great a number of kindred and dependents as he was capable of maintaining; theſe were accuſtomed to follow him in war, and in time of peace to ſhare in the rural ſports to which he was addicted; it was their duty to eſpouſe his quarrel on every occaſion, as it was incumbent on him to defend them from injuries. In a family ſo ſmall, that all its members could be maintained about the ſame houſe, a mutual obligation of this kind was naturally underſtood from the ſituation of the parties; but in larger ſocieties it was rendered more clear and definite by an expreſs agreement. A man of great opulence diſtributed part of his demeſne among his retainers, upon condition of their performing military ſervices; as, on the other hand, the ſmall proprietors in his neighbourhood, being incapable of maintaining their independence, were glad to purchaſe his protection, by agreeing to hold their land upon the ſame terms. Hence the origin of vaſſalage in Europe, the nature of which will be

more

more particularly explained hereafter. Every conſiderable proprietor of land had thus a number of military ſervants, who, inſtead of pay, enjoyed a part of his eſtate, as the reward of their ſervices. By this diſtribution and arrangement of landed poſſeſſions, the moſt natural remedy was provided for the evils ariſing from the weakneſs of government. Men of inferior ſtation, who ſingly were incapable of defending their perſons or their property, obtained more ſecurity, as well as conſideration, under their reſpective ſuperiors; and the inhabitants of a large territory, being combined in ſocieties, who had each of them a common intereſt, were in a better condition to reſiſt the general tide of violence and oppreſſion.

From theſe obſervations we may diſcover how far the connections between the ſuperior and vaſſal, and the various parts of what is called the feudal ſyſtem, are peculiar to the modern ſtates of Europe, or belong to them in common with other nations.

In Greece and Rome, or in any of the ſmall ſtates of antiquity, there are few or no traces to be diſcovered of the feudal inſtitutions. From the inconſiderable number of people collected

collected in each of thoſe ancient ſtates, and from the narrowneſs of the territory which they inhabited, the government was enabled, at an early period, to extend its protection to all the citizens, ſo as to free them from the neceſſity of providing for their own ſafety, by aſſociating themſelves under particular military leaders. If any ſort of vaſſalage, therefore, had been introduced in the infancy of thoſe nations, it appears to have been aboliſhed before they were poſſeſſed of hiſtorical records.

In many rude nations of greater extent, both in ancient and modern times, we may diſcern, on the contrary, the outlines of the feudal policy. This, if we can truſt the relations given by travellers, is particularly the caſe at preſent in ſeveral of the kingdoms in Aſia, and upon the ſouthern coaſt of Africa. In theſe kingdoms, the number of barbarians collected under one ſovereign has probably rendered the government ſo feeble, as to require a number of ſubordinate aſſociations, for the protection of individuals; but the coalition of different families being neither ſo extenſive, nor produced in the ſame rapid manner, as in the modern ſtates of Europe, the regulations

to

to which it has given occaſion are neither ſo numerous and accurate, nor have they been reduced into ſo regular a ſyſtem.

4. The cuſtom of duelling, and the peculiar notions of honour, which have ſo long prevailed in the modern nations of Europe, appear to have ariſen from the ſame circumſtances that produced the feudal inſtitutions.

The political eſtabliſhment, in all thoſe nations, was, for a long time, incapable of preventing the unlimited exerciſe of private hoſtilities; and every family, being expoſed to invaſion from all its neighbours, was obliged to be conſtantly in a poſture of defence. In theſe circumſtances, the military ſpirit of the people was not only raiſed to a high pitch, but it received a peculiar direction, and was attended with peculiar habits and opinions.

In a war between two great nations, when large and well-diſciplined armies are brought into the field, there is little room for individuals to acquire diſtinction by their exploits; and it is only expected of them, that, like the parts of a complex machine, they ſhould perform, with ſteadineſs and regularity, the ſeveral movements for which they are deſtined; neither

ther are thoſe who belong to the oppoſite armies likely to entertain much perſonal animoſity, the national quarrel being loſt in that promiſcuous multitude among whom it is divided. But in the private wars that took place between the ſeveral families of modern Europe the caſe was very different; for the number engaged upon either ſide was commonly ſo ſmall, and they had ſo little of military diſcipline, that every ſingle perſon might act a diſtinguiſhed part, and in the time of action was left in ſome meaſure to purſue the dictates of his own bravery or prudence; ſo that a battle conſiſted of little more than the random combats of ſuch particular warriors as were led by inclination or accident to oppoſe one another. The natural conſequence of ſuch a ſituation was to produce a keen emulation between the individuals of the ſame party, as well as a ſtated oppoſition, and often a violent animoſity, between thoſe of different parties. In a long courſe of hoſtilities, the ſame perſons were often led to encounter each other; and having fought (perhaps on different occaſions) with various ſucceſs, were at length excited by a mutual challenge to a comparative

tive trial of their ſtrength, courage, or ſkill. By repeated ſtruggles of this nature a continual jealouſy was kept up between the members of different families, who in proſecuting their quarrels became no leſs eager to ſupport their military character, and to avenge any inſult or indignity, than to defend their poſſeſſions.

The private wars between different families, which gave riſe to mutual emulation and jealouſy, as well as to violent animoſity and reſentment, continued in Europe for many centuries, notwithſtanding that ſome improvements were made by the people in the common arts and modes of living. To aſſaſſinate thoſe from whom great provocation had been received was, among the primitive conquerors of the Roman empire, a method of revenge purſued without ſcruple, and beheld without cenſure. By degrees however the love of military glory prevailed over the gratification of reſentment, and thoſe who aimed at maintaining the rank of gentlemen became aſhamed of taking an unfair advantage of an enemy, which might imply a confeſſion of inferiority in proweſs; but thought it incumbent upon them, whatever was the quarrel, to invite him

to

to an open conteſt, in which the ſuperiority might be decided upon equal terms. Thus the practice of *duelling*, the moſt refined ſpecies of private vengeance, was rendered more and more faſhionable; and in every country of Europe, according to its progreſs from barbariſm, aſſaſſination became leſs frequent, and was held in greater deteſtation. In Spain and Portugal, the leaſt improved of thoſe countries, it never has been completely extirpated; and the inhabitants have not yet attained that refinement of the feudal manners, which the reſt of Europe, from a ſtill higher pitch of improvement, are now ſeeking to lay aſide.

So far was the government from reſtraining the cuſtom of duelling, that the efforts of the civil magiſtrate tended rather to encourage it. Thoſe who had ſuſtained an affront thought it diſhonourable to apply for redreſs to a court of juſtice; but when a diſpute had ariſen in matters of property, and had become the ſubject of a law-ſuit, it frequently happened, that in the courſe of the debate the parties, by their proud and inſolent behaviour, affronted each other; which made them withdraw their cauſe from the court, in order to determine it by the ſword;

ſword; the judge was unable to prevent this determination, but he endeavoured to diminiſh the bad conſequences that might ariſe from it. By regulating the forms of the encounter, and ſuperintending the ceremonies with which it was conducted, he availed himſelf of the punctilios of honour, which faſhion had eſtabliſhed, and reſtrained the friends of either party from interfering in the quarrel. Hence the *judicial combat*, which has been erroneouſly conſidered by ſome as the origin of duelling, but which undoubtedly tended to ſupport and extend the practice, by giving it the ſanction of public authority. It has, accordingly, been obſerved, that as, in a judicial controverſy, the moſt common provocation conſiſted in the parties contradicting each other in point of fact; ſo *giving the lye* has become that ſort of offence, on account of which cuſtom has rendered it moſt indiſpenſably neceſſary to require *ſatisfaction* by fighting.

The inſtitutions of *chivalry*, and the *jouſts* and *tournaments*, were the natural appendages of the cuſtom of duelling, or rather of that ſtate of manners which gave riſe to it.

In the battles of the feudal ages, men of

opulence and rank enjoyed many advantages over the common people, by their fighting on horſeback, by the ſuperior weapons and armour which they made uſe of, and above all, by that ſkill and dexterity which they had leiſure to acquire. To improve theſe advantages was the great object of the gentry, who from their early years devoted themſelves to the profeſſion of arms, and generally became attached to ſome perſon of experience and reputation, by whom they were trained up and inſtructed, not only in the ſeveral branches of the military exerciſe, but in all thoſe qualifications that were thought ſuitable to their condition. To encourage theſe laudable purſuits, a mark of diſtinction was beſtowed upon ſuch as had gone through a complete courſe of military education, and they were admitted, with peculiar ceremonies, to the honour of knighthood; from which their proficiency in the art of war, and in the virtues and accompliſhments connected with that employment, were underſtood to be publicly aſcertained and acknowledged.

Among the multitude of knights belonging to every country, who became profeſſed candidates

didates for fame, and upon that account rivals to one another, military ſports, that afforded an opportunity of diſplaying thoſe talents upon which the character of every gentleman chiefly depended, were of courſe the favourite entertainments. As theſe became the ordinary paſtime among private perſons, ſo they were exhibited, on particular occaſions, by princes and men of high rank, with great pomp and ſolemnity. The *tournaments* were the greater and more public exhibitions, the *jouſts* were thoſe of an inferior and private nature; to both of which all who enjoyed the dignity of knighthood were made welcome: they were alſo invited to that *round table*, at which the maſter of the ceremony entertained his company, and of which the figure is ſaid to have been contrived on purpoſe to avoid any diſpute concerning the precedence of his gueſts.

Theſe public ſpectacles were begun in France under the kings of the ſecond race; and were thence, by imitation, introduced into the other countries of Europe. They are ſaid to have been firſt known in England, during the reign of Stephen, and to have been

rendered common in that of Richard the firſt.

There can be no doubt that theſe inſtitutions and practices, by which badges of diſtinction were given to military eminence, and by which numbers of individuals were brought to contend for the prize of ſkill and valour, would contribute to ſwell and diffuſe the idea of perſonal dignity by which they were already elated, and to inflame that mutual jealouſy by which they were ſet in oppoſition to one another. The ſame opinions and ſentiments acquired additional force from thoſe extraordinary enterpriſes in which the people of different European countries were accidentally combined againſt a common enemy; as in the wars between the Moors and Chriſtians, and in the expeditions undertaken by the latter for the purpoſe of reſcuing the holy ſepulchre from the hands of infidels. The competition ariſing on thoſe occaſions among the numerous warriors collected in the ſame army, was daily productive of new refinements upon the military ſpirit of the times, and contributed to multiply and eſtabliſh the forms and ceremonies

monies which, in every diſpute of honour, were held indiſpenſably neceſſary.

From theſe cauſes the cuſtom of duelling has become ſo deeply rooted as, notwithſtanding a total change of manners and circumſtances, to maintain its ground in moſt of the countries of Europe; and the effect of later improvements has only been to ſoften and render more harmleſs a relict of ancient barbarity, which they could not deſtroy. In England, where the lower ranks of men enjoy a degree of conſideration little known in other countries, the military ſpirit of the gentry has even deſcended to the common people, as appears from the cuſtom of *boxing* peculiar to the Engliſh, by which they decide their quarrels according to ſuch punctilios of honour as are dictated by the pure and genuine principles of chivalry.

In other ages and countries there is perhaps no inſtance of any people whoſe ſituation could lead them to entertain the ſame notions of military dignity which have been diſplayed by the modern inhabitants of Europe. The independent families or tribes of ſhepherds, in Tartary or in other parts of the world, have ſeldom

occaſion to reſide ſo long in the ſame neighbourhood as to create a ſtated oppoſition and jealouſy between their different members. The nations of huſbandmen, upon the ſouthern coaſt of Africa, and in ſeveral parts of Aſia, who have in ſome degree adopted the feudal policy, are too little advanced in civilization to admit of any refinement in their methods of executing revenge. In thoſe ancient ſtates that were moſt addicted to war, as in Rome and Sparta, the people were early brought under the authority of government, ſo as effectually to prevent the exerciſe of private hoſtilities. A Roman, or a Spartan, therefore, was never under the neceſſity of ſupporting his military dignity, in oppoſition to his own countrymen; but was conſtantly employed in maintaining the glory of his country, in oppoſition to that of its enemies. The prejudices and habits acquired in ſuch a ſituation were all of a patriotic nature. The pride or vanity of individuals was exerted in acts of public ſpirit, not in private animoſities and diſputes.

M. Voltaire imagines that the practice of duelling, in modern Europe, has ariſen from the

the cuſtom, among the inhabitants, of wearing a ſword, as an ordinary part of dreſs; but the ancient Greeks, as we learn from Thucydides, were, at an early period, accuſtomed to go armed; and there is ground to believe that the ſame cuſtom has prevailed in all barbarous countries, where the people found themſelves continually expoſed to danger. The continuance of this practice in Europe longer than in other countries appears to be the effect, not the cauſe of duelling; or rather it is the effect of that peculiar direction given to the military ſpirit, of which duelling is the natural attendant.

5. The ſame ſituation produced the romantic love and gallantry by which the age of chivalry was no leſs diſtinguiſhed than by its peculiar notions of military honour.

The appetite of the ſexes, which in the greater part of animals, nature has, for wiſe purpoſes, connected with exquiſite pleaſure, is in the human ſpecies productive of ſentiments and affections, which are of great conſequence to the general intercourſe of ſociety, as well as to the happineſs of individuals. Theſe two ſources of enjoyment, though in

reality inſeparable, and though the latter is ultimately derived from the former, are not always increaſed and refined by the ſame circumſtances. The mere animal inſtinct ſeems to be ſtrengthened by every circumſtance that gives occaſion to habits of indulgence; but the peculiar paſſions that nature has grafted on this enjoyment appear on the contrary to be raiſed to the higheſt pitch, by the difficulty attending their gratification; which, as it fixes the imagination upon the ſame object, has a tendency to exalt its value, and to debaſe that of every other in proportion.

In the ages of poverty and barbariſm, mankind are commonly too much occupied in purſuit of mere neceſſaries, to pay much regard to the intercourſe of the ſexes; and their ſimple deſires with relation to this point being eaſily gratified as ſoon as they ariſe, are not likely to ſettle with much predilection or preference upon any particular perſon.

The firſt great improvements that are made in any country, with reſpect to the means of ſubſiſtence, being calculated to multiply the comforts and conveniencies of life, enable the inhabitants to extend the circle of their plea-

ſures

ſures, and to refine upon every enjoyment which their ſituation affords; the pleaſures of ſex become therefore, an object of greater attention, and being carried to a higher degree of refinement, are productive of more variety in the taſte and inclination of different perſons; by which they are often diſappointed in the attainment of their wiſhes, and their paſſions are proportionably inflamed. The introduction of property, which, being accumulated in different proportions, becomes the foundation of correſponding diſtinctions of rank, is at the ſame time the ſource of additional reſtraints upon the free commerce of the ſexes. By the innumerable pretenſions to dignity and importance, derived from the vanity of opulence, or the pride of family, individuals have often to ſurmount a variety of obſtacles in order to gratify their paſſions; and in contracting what is accounted an unſuitable alliance, they are commonly checked and controuled, not only by the watchful interpoſition of their relations, but ſtill more by the rules of propriety and decorum, which cuſtom, in conformity to the ſtate of ſociety, has univerſally eſtabliſhed,

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The effect of great wealth and luxury, in a polished nation, is on the other hand to create an immoderate pursuit of sensual pleasure, and to produce habits of excessive indulgence in such gratifications. In such a situation particular attachments are apt to be lost in the general propensity; and the correspondence of the sexes becomes, in a great measure, subservient to voluptuousness, or to the purposes merely of elegant amusement.

The passion of love, therefore, is likely to attain the highest degree of refinement in a state of society equally removed from the extremes of barbarism and of luxury.

The nations formed in the western part of Europe, upon the downfal of the Roman empire, appear to have continued for many centuries in that condition. They were possessed of such opulence, and of such improvements in society, as to stamp some value upon the pleasures of sex, without creating much incitement to debauchery. Their distinctions of rank, arising from the very unequal distribution of property, and the mutual apprehension and jealousy which a long course of private hostilities had introduced among different families,

families, occaſioned, at the ſame time, in their whole correſpondence, a degree of caution and diſtruſt unknown in other ages and countries. The women of every family, as well as the men, were taught to over-rate their own dignity, and to look upon it as diſgraceful to give any encouragement to a lover, whoſe rank and worth did not entitle him to a preference, in the opinion of the world, and in that of her own prejudiced relations.

As no man in that age was allowed to claim any merit, unleſs he had acquired a military reputation, the warrior who had been inſpired with a youthful inclination could not expect any marks of regard, far leſs a return of affection, without ſignalizing his fortitude and proweſs, by encountering a variety of hardſhips and dangers. Before he had in this manner deſerved the favour of his miſtreſs, it was held inconſiſtent with her character to divulge any impreſſion ſhe had received to his advantage; and the laws of delicacy required that ſhe ſhould behave to him on all occaſions with diſtance and reſerve, if not with inſolence and ſcorn. By the delays, the diſappointments, the uncertainty of ſucceſs, to which he was thus

expoſed, his thoughts were long engroſſed by that favourite object; and the ardours of a natural appetite were at length exalted into a violent paſſion.

The romantic love, peculiar to the ages of chivalry, was readily united with the high ſentiments of military honour, and they ſeem to have mutually promoted each other. An accompliſhed character in thoſe times required not only the moſt undaunted courage and reſolution, ſupported by great generoſity, and a contempt of every ſordid intereſt, but alſo the moſt reſpectful regard and reverence for the ladies, together with a ſincere and faithful paſſion for ſome individual. Perſons poſſeſſed of theſe accompliſhments, or who deſired the reputation of poſſeſſing them, devoted themſelves to the particular profeſſion of protecting the feeble, of relieving the diſtreſſed, of humbling and reſtraining the inſolent oppreſſor. Not content with ordinary occaſions of acquiring diſtinction, there were ſome who thought it neceſſary to travel from place to place, with the avowed purpoſe of redreſſing grievances, and of puniſhing the injuries to which, from the diſorderly ſtate of the country, the unwar-

like

like and defenceleſs, but eſpecially the female ſex, were daily ſubjected.

It happened indeed in thoſe times, as it naturally happens wherever mankind have been directed by faſhion to admire any particular ſort of excellence, that the deſire of imitating the great and gallant actions of heroes and lovers, was often disfigured and rendered ridiculous by affectation, and became productive of artificial and fantaſtic manners. The knight-errant, who found no real abuſes to combat, endeavoured to procure diſtinction by adventures of no utility, and which had no other merit but the danger attending them; as he who had never felt a real paſſion, tortured his mind with one merely imaginary, complained of rigours that he had never met with, and entered the liſts, to maintain that ſuperior beauty and merit which he had never beheld.

It is unneceſſary to remark, that theſe inſtitutions and cuſtoms, and the circumſtances from which they proceeded, were peculiarly unfavourable to trade and manufactures. The Saxons in England, as well as the other nations who ſettled about the ſame time upon the weſtern

weſtern continent of Europe, though immedi- ately after their ſettlement they had been excited to a conſiderable improvement in agriculture, and in ſome of the common arts of life, remained afterwards for ages in that hoſtile and turbulent ſtate which gave little room or encouragement for the exerciſe of peaceable occupations. The manners introduced into thoſe countries in early times being thus confirmed by long uſage, have become proportionably permanent, and, notwithſtanding the changes of a ſubſequent period, have left innumerable traces of their former exiſtence.

CHAP. V.

The State of Property, and the different Ranks and Orders of Men, produced by the Settlement of the Saxons in Britain.

THE diſtribution of property among any people is the principal circumſtance that contributes to reduce them under civil government, and to determine the form of their political conſtitution. The poor are naturally dependent upon the rich, from whom they derive ſubſiſtence; and, according to the accidental differences of wealth poſſeſſed by individuals, a ſubordination of ranks is gradually introduced, and different degrees of power and authority are aſſumed without oppoſition, by particular perſons, or beſtowed upon them by the general voice of the ſociety.

The progreſs of the Saxon arms in Britain produced an appropriation of land and moveables, by all the free members of the community. Every warrior conſidered himſelf as entitled to a ſhare of the ſpoil acquired by the conqueſt; and obtained a number of captives, and

a landed territory, proportioned to his valour and activity, or to the ſervices which he had performed. It is probable that the ſeveral conquering parties were ſeldom at the trouble of making a formal diviſion of their acquiſitions, but commonly permitted each individual to enjoy the booty which he had ſeized in war, and to become maſter of ſuch a quantity of land, as by means of his captives, and the other members of his family, he was enabled to occupy and to manage. Such of the ancient inhabitants, on the other hand, as remained in the country, and had preſerved their liberty, were in all probability underſtood to retain the property of thoſe eſtates of which they had been able to maintain the poſſeſſion.

There is good reaſon to believe that, for ſome time after the ſettlement of thoſe barbarians in England, the landed eſtates acquired by individuals were generally of ſmall extent. The Saxons were among the pooreſt and the rudeſt of the German nations who invaded the Roman empire; and Britain was, on the other hand, one of the leaſt cultivated of all its provinces; at the ſame time that the progreſs of the conquerors in the appropriation of land (which

(*which from theſe cauſes muſt have been proportionably ſlow and gradual*) was further obſtructed by the vigorous oppoſition of the natives, who ſeem to have diſputed every inch of ground with their enemies.

We accordingly find that, from the beginning of the Anglo-Saxon government, the land was divided into *hides*, each comprehending what could be cultivated by a ſingle plough. This, among a ſimple people, becomes a natural boundary to the poſſeſſion of thoſe who live in the ſame houſe, and are jointly at the expence of procuring that uſeful but complicated inſtrument of huſbandry. The general eſtimation of the Anglo-Saxon lands, according to this inaccurate meaſure, points out ſufficiently the original circumſtance which regulated the extent of the greater part of eſtates. When, by the progreſs of cultivation, and by future ſucceſſes in war, the landed property of individuals was increaſed, the ancient ſtandard of computation remained; and the largeſt eſtates, by comparing them with the ſmalleſt, were rated according to the number of *hides* which they contained*.

* See Spelm. Gloss. v. *Hyda*.

While the eſtates poſſeſſed by the Anglo-Saxons were ſmall, they were cultivated under the immediate inſpection of the owner, his kindred or ſervants, who lived in his own houſe, and were fed at his table. But when the territory acquired by any perſon became too extenſive, and the members of his family became too numerous, to render this mode of living any longer convenient, a part of his land was parcelled out into different farms, and committed to the management of particular bondmen, from whom, at the end of the year, he required an account of the produce. A part of any great eſtate came likewiſe to be occupied by the kindred and free retainers of the proprietor, to whom, in return for that military ſervice which they undertook to perform, he aſſigned portions of land for a maintenance.

Hence the diſtinction between the *in-land* of the Saxons, and the *out-land:* the former was what lay next the manſion-houſe of the owner, and was retained in his own hands; the latter, what lay at a greater diſtance, and was in the poſſeſſion and management either of his retainers or ſervants †.

† See Spelman on Feuds and Tenures by Knight-ſervice, ch. 5.

The *out-land* of every opulent perſon came thus to be poſſeſſed by two different ſorts of people; the bond-men, who laboured their farms for the benefit of their maſter, and thoſe freemen (moſt commonly his kindred) who had become bound to follow him in war, and upon that condition were entitled to draw the full produce of their poſſeſſions. The former have been called *villeins*, the latter *vaſſals*.

Conſidering the right of the latter to the lands which they poſſeſſed, in contradiſtinction to that of the perſon from whom they derived their poſſeſſion, the landed eſtates of the Anglo-Saxons have been divided into *allodial* and *feudal*. The allodial eſtates were thoſe of every independent proprietor. Over theſe the owner enjoyed a full dominion; and he had a right to alienate or diſpoſe of them at pleaſure. Upon the death of a proprietor, they deſcended to his heirs, according to certain rules of ſucceſſion which cuſtom had introduced; and they were not burdened with ſervice of any kind in favour of a ſuperior.

The feudal eſtates were thoſe poſſeſſed by vaſſals upon condition of military or other ſervices;

vices: theſe were held originally during the pleaſure of the ſuperior, though it appears that cuſtom had early ſecured the poſſeſſion of the vaſſal for a limited time. When he had ploughed and ſowed his ground, it was thought equitable that he ſhould be allowed to reap the crop ariſing from his labour and expence. Thus a year came ſoon to be acknowledged as the ſhorteſt period, upon the concluſion of which he might be deprived of his poſſeſſion. Even after this period it was not likely that a ſuperior would think of putting away his relations and ancient retainers, with whoſe perſonal attachment he was well acquainted, and of whoſe valour and fidelity he had probably been a witneſs. The poſſeſſions, therefore, of the greater part of the vaſſals, though not confirmed by any poſitive bargain, with reſpect to the term of their continuance, were in fact uſually retained for life; and even upon the death of the poſſeſſor were frequently enjoyed by his poſterity, whom, out of affection to the anceſtor, the ſuperior commonly preferred to a ſtranger, or to any diſtant relation. When the lands of a vaſſal had, by a poſitive bargain,

bargain, been only ſecured to him for life, or for a limited period, they were called *benefices**.

The differences which I have mentioned in the condition of eſtates, gave riſe, moſt probably, to the celebrated diſtinction of *boc-land* and *folc-land*. The former, comprehending the eſtates of the nobler ſort, was *allodial*, and being held in abſolute property, was conveyed by a deed in writing; the latter was the land poſſeſſed by people of inferior condition, who having no right of property, but holding their poſſeſſions merely as tenants, for payment of rents or ſervices, did not obtain any written title for aſcertaining their rights†.

It may be remarked that *boc-land* might belong either to the king or to a ſubject, and that it implied no obligation to feudal ſervices, in the latter caſe, more than in the former. It is true that ſubjects who enjoyed *boc-land* were bound to defend the kingdom from enemies by ſea or land, and to build or repair bridges and caſtles‡: but theſe were ſervices which they owed to the public as citizens, not to the

V. Feud. Consuet. lib. i. tit. i. §. 1. 2.

Spelm. on Feuds and Tenures by Knight-service, chap. 5.

Expedition, *Burghbote*, and *Brigbote*.

king as vaſſals. Theſe duties were impoſed by a general law of the kingdom, and were laid upon the poſſeſſors of *folc-land* as well as of *boc-land*, upon the clergy as well as laity, in ſhort, upon all the free members of the community*.

Such was the original ſtate of property in the Anglo-Saxon government: from the conſideration of which, together with the early circumſtances and manners of the nation, the inhabitants, excluſive of the ſovereign, may be diſtinguiſhed into three different ranks or orders.

1. The firſt and moſt conſpicuous was that of the military people. It is probable that for ſome time after the ſettlement of the Saxons in England, this comprehended all the free men of the nation. The general character of thoſe adventurers, and the views with which they invaded Britain, were ſuch as diſpoſed every man, who had the direction of his own conduct, to become a ſoldier, and to engage in every enterprize by which either plunder or reputation might be procured. Theſe war-

* See Spelman on Feuds and Tenures by Knight-service, chap. 8. 9. 10. 11.

riors,

riors, who in general were denominated *thanes*, came ſoon to be arranged in two claſſes; the one conſiſting of thoſe heads of families who had acquired allodial property; the other of ſuch retainers as held lands, by a military tenure, either of the king, or of any other allodial proprietor. Both theſe claſſes of people were accounted gentlemen, and were underſtood to be of the ſame rank, in as much as they exerciſed the honourable profeſſion of arms; though in point of influence and power there was the greateſt diſparity, the vaſſals being almoſt intirely dependent upon their ſuperior. The ſoldiers of this lower claſs appear to have received the appellation of *leſs*, or *inferior thanes**.

2. The peaſants compoſed a ſecond order, greatly inferior in rank to the thanes of either claſs. They appear to have conſiſted chiefly of ſuch perſons as had been reduced into captivity during the long wars between the Britons and the Saxons, and had afterwards been entruſted by their maſters with the management of particular farms; they were called *ceorls, carles*, or *churles*. Some of them, no

* Spelman, in the treatise above quoted.

doubt, were kept in the houſe of their maſter, and employed in cultivating the land in his own poſſeſſion; but the greater number were uſually ſent to a diſtance, and placed, as it happened to be convenient, upon different parts of his eſtate. The former being under his eye, and acting on all occaſions from his orders, remained for a long time in their primitive ſervile condition; the latter, on the contrary, being withdrawn from his immediate inſpection, had neceſſarily more truſt and confidence repoſed in them, and were thence enabled, with ſome degree of rapidity, to improve their circumſtances. From their diſtance, the maſter was obliged to relinquiſh all thoughts of compelling them to labour, by means of perſonal chaſtiſement; and as, from the nature of their employment, he could hardly judge of their diligence, otherwiſe than by their ſucceſs, he ſoon found it expedient to bribe their induſtry, by giving them a reward in proportion to the crop which they produced. They were thus allowed to acquire property; and their condition became ſimilar, in every reſpect, to that of the *adſcripti glebæ* among the ancient Romans, to that of the preſent

ſent colliers and ſalters in Scotland, or of the bondmen employed in the mines in ſeveral parts of Europe. In this ſituation ſome of them, by induſtry and frugality, found means to accumulate ſo much wealth, as enabled them to ſtock their own farms, and become bound to pay a certain yearly rent to the maſter.

It muſt be acknowledged, the writers upon Saxon antiquities have generally ſuppoſed that the *ceorls* were never in a ſervile condition; that from the beginning they were free tenants, forming a diſtinct claſs of people, and holding an intermediate rank between the villeins or bondmen, and thoſe who followed the military profeſſion. But this ſuppoſition, ſo far as I know, is made without any ſhadow of proof: it probably took its riſe from obſerving that the free tenants, towards the end of the Anglo-Saxon government, were very numerous, without attending to the circumſtances from which they obtained their freedom. It is not likely, however, that in ſo rude and warlike an age any ſet of men, who had not been debaſed by ſervitude, and reſtrained by their condition, would attach themſelves wholly

wholly to agriculture, and be either unfit for war, or unwilling to engage in it. If the *ceorls* had not been originally in ſome degree of bondage, they would undoubtedly have been warriors; and we accordingly find that when, from the circumſtances above mentioned, they had afterwards acquired conſiderable privileges, they were advanced to the rank and employment of thanes.

Though the peaſants were chiefly employed in agriculture, they were ſometimes engaged in other branches of labour, as a collateral profeſſion. From the poverty and rudeneſs of the country, for ſome time after the ſettlement of the Saxons in Britain, it may eaſily be imagined that little encouragement was given to mechanical arts, and that artificers and tradeſmen were not of ſufficient conſequence to become a ſeparate order in the community. Some mechanics, even in that ſimple age, were doubtleſs neceſſary to procure the ordinary accommodations of life, but the demand for their work was too narrow to occupy the ſole attention of any individual. Such of the bondmen as had attained a peculiar dexterity in performing any branch of manual labour,

were

were naturally employed by the maſter in the exerciſe of it, and thus were led, by degrees, to make ſome proficiency in particular occupations. But they were not hindered by theſe employments from cultivating the ground; and they obtained a maintenance in the ſame manner with the other peaſants, either by living in the houſe of their maſter, or by the poſſeſſion of ſeparate farms upon his eſtate. As theſe mechanial employments were accounted more unwarlike and contemptible than the exerciſe of huſbandry, there was yet leſs probability that any freeman would be willing to engage in them.

3. A third order of men, who in this period of the Engliſh hiſtory became more and more diſtinguiſhed, was that of the clergy. The numerous body of church-men introduced by the Chriſtian religion, eſpecially in the weſtern part of Europe, the extenſive power and authority which they gradually acquired, together with the peculiar views and motives by which they were actuated, amidſt the diſorder and barbariſm of the feudal times, are circumſtances of ſo much magnitude, as to deſerve particular attention in tracing any modern ſyſtem of

of European policy. A few remarks, however, concerning the nature and origin of eccleſiaſtical juriſdiction, and the primitive government of the Chriſtian church, will be ſufficient, upon a ſubject that has been ſo often and ſo fully examined.

SECTION I.

Of the chief Regulations attending the Eſtabliſhment of Chriſtianity in the Roman Empire, and in the modern Kingdoms of Europe.

AFTER the Chriſtian religion had been extended over a great part of the Roman dominions, it was at laſt, in the reign of Conſtantine, taken under the protection of government, and obtained the ſanction of public authority. The uniformity of circumſtances attending the introduction of this new religion, produced throughout the whole empire an uniform ſet of eccleſiaſtical regulations.

In every province, religious teachers had taken up their reſidence wherever they met with encouragement; and the country was, by degrees, divided into ſmall diſtricts, or pariſhes,

riſhes, in each of which a particular clergyman had gained an eſtabliſhment.

As the inhabitants of a pariſh were accuſtomed to aſſemble at ſtated times for public worſhip, and were by that means united in a religious ſociety, ſo the zeal with which they were animated in ſupport of their religion diſpoſed them to inſpect the conduct and theological opinions of all their members. For the regulation of theſe, and of all their common affairs, the heads of families, belonging to every congregation, frequently held meetings, in which their paſtor was naturally allowed to preſide, and gradually obtained the chief direction of their meaſures. Even in ſecular matters, the people were diſpoſed to be guided by his judgment; and when a controverſy had ariſen between individuals, he was eſteemed the moſt proper perſon to compoſe the difference; which was therefore moſt commonly referred by the parties to his determination.

The advancement of Chriſtianity opened a communication between the profeſſors of this religion belonging to different pariſhes, who in like manner were accuſtomed to deliberate upon their common religious concerns. Some particular

particular clergyman became the ordinary preſident in thoſe caſes; and upon that account acquiring ſuperior conſideration and rank, was at length exalted to be ſuperintendant, or biſhop, of a large diſtrict or dioceſe. When theſe dioceſan meetings were greatly multiplied, the attendance of the laity being found inconvenient, and appearing to them of leſs conſequence, was gradually neglected, ſo that the buſineſs came to remain entirely in the hands of the clergy.

The miniſter of every pariſh was at firſt maintained by the occaſional bounty of thoſe who reaped the benefit of his inſtructions; and ſuch was the attachment of the primitive Chriſtians to their teachers, and to one another, that they cheerfully made contributions not only for that purpoſe, but alſo for the maintenance of their poor. In the declining ſtate of Rome, when the decay of knowledge, by infuſing a ſtrong leaven of ſuperſtition, had corrupted the purity of the Chriſtian religion, the clergy found means to obtain a more independent revenue, by perſuading perſons upon their death-bed to make donations to the church, in order to atone for their offences.

In

In the reign of the emperor Conſtantine, when Chriſtianity became the eſtabliſhed religion of the empire, teſtamentary bequeſts in favour of ſocieties, which had formerly been prohibited by the Roman law, came to be permitted without controul; and from this time the faſhion of leaving legacies to the church for pious uſes became ſo univerſal, that the clergy were enabled to accumulate large eſtates, both in moveables and land.

The management of theſe eſtates, as of all other matters concerning religion, was naturally devolved upon the clergy of every dioceſe, who aſſumed a diſcretionary power of diſtributing the produce in ſuch a manner as they thought moſt expedient, or moſt conformable to the purpoſe of the donors. As the biſhop, however, acquired more influence in eccleſiaſtical meetings, he was in a capacity of appropriating to his own uſe a greater ſhare of that revenue which fell under their diſpoſal. His dignity became more conſpicuous; and for ſupporting it a ſuitable eſtate was deemed neceſſary. His cathedral was enlarged and rendered more magnificent, a more pompous form of worſhip was introduced into it, and a number

number of clergymen were appointed to aſſiſt in the religious ſervices, or other branches of duty, that were ſuppoſed to belong to his department.

The riſe of a biſhop over the clergy of his dioceſe may be compared to that of a rude chief over the members of his tribe; as in both caſes a ſuperiority of ſtation, derived from perſonal qualities, put it in the power of a ſingle perſon to acquire ſuperior wealth, and thence to become the permanent head or leader of a ſociety: but the original pre-eminence of the chief aroſe from his military talents, that of the biſhop, from the veneration paid to the ſanctity of his character and profeſſion. This makes the only difference in the nature of their advancement.

While thoſe who had the direction of religious matters were thus advancing in opulence and power, there aroſe a new ſet of fanatics, who divided the eſteem and admiration of the people, und were at length admitted into the clerical profeſſion.

The erroneous notions entertained in the dark ages, concerning the Supreme Being; the ſuppoſition that he is actuated by anger and

and reſentment, in a literal ſenſe, againſt thoſe who tranſgreſs his laws, and that theſe paſſions are to be gratified by the mere ſuffering of his creatures; ſuggeſted to perſons impreſſed with a ſtrong feeling of their own guilt, and tortured upon that account with ſorrow and remorſe, the idea of ſubmitting to voluntary penances, in order to appeaſe an offended Deity, and to avert that future puniſhment which they were conſcious of having deſerved. From views of this kind, particular perſons became diſpoſed to retire from the world, and to deny themſelves almoſt all the comforts and enjoyments of life: ſocieties were afterwards formed, the members of which expreſsly bound themſelves not only to ſubmit to actual puniſhments, but to renounce all thoſe pleaſures and gratifications to which mankind have the greateſt propenſity, and for this purpoſe came under the vows of poverty, of chaſtity, and of obedience to the rules of their community. As Chriſtianity took a firmer hold of the mind than any of the religions which had been formerly eſtabliſhed, this perverſion of its doctrines was attended with conſequences proportionably more extenſive.

Theſe miſguided votaries to mortification being originally poor, were ſupported either by alms or by their manual labour; but their exemplary lives, and the auſterities which they practiſed, having excited univerſal admiration, enabled them to follow the example of the ſecular clergy, by procuring donations from the people; and hence, notwithſtanding the poverty ſtill profeſſed by individuals, their ſocieties acquired the poſſeſſion of great riches. The members of theſe communities were by degrees admitted into holy orders; and became no leſs inſtrumental in promoting the influence of the church, than in communicating religious inſtruction.

As the affairs of a dioceſe had fallen under the chief direction of a biſhop, thoſe of a monaſtery were conducted by an *abbot*, who preſided in the meetings of the ſociety, and who, by obtaining authority in conſequence of that diſtinction, was at length permitted to aſſume the diſtribution and diſpoſal of their property.

Although the authority and juriſdiction of the church in this early period of Chriſtianity, and the ſubordination among different ranks of churchmen,

churchmen, proceeded in good meaſure from the nature of the buſineſs committed to their care, and the influence derived from their profeſſion, yet the general fabric of eccleſiaſtical government was likewiſe a good deal affected by the political circumſtances of the Roman empire. The perſon exalted to the head of a dioceſe was very often the miniſter of the moſt conſiderable town of that diſtrict, who from the greater weight and importance of his flock enjoyed a proportionable conſideration among his brethren of the clergy. As by the civil policy of the empire many of thoſe diſtricts were united in what, according to the later diviſion of the country, was called a *province*, the clergy of this larger territory were led frequently to hold provincial ſynods, in which the biſhop of the capital city, acquiring reſpect from his reſidence near the ſeat of government, became the regular preſident, and was thence exalted to the dignity and title of a *metropolitan* or *archbiſhop*. In the yet more extenſive diviſions of the empire, which were called *juriſdictions*, the clergy were induced, upon ſome occaſions, to deliberate; and in thoſe greater meetings the right of preſiding

was claimed by the biſhop, who reſided in the ſame city with the governor of each reſpective *juriſdiction*. Hence there aroſe a ſtill ſuperior rank in the church, that of an *exarch* or *patriarch*, who obtained certain prerogatives over the clergy of that great diviſion. Of all the patriarchs in Chriſtendom thoſe of Rome and Conſtantinople, the two great capitals of the empire, became ſoon the moſt diſtinguiſhed, the former of which enjoyed a pre-eminence over all the clergy in the weſtern, the latter over thoſe in the eaſtern provinces.

Upon the conqueſt of the weſtern empire by the barbarous nations, the ancient inhabitants, who had for a long time been declining in arts and knowledge, experienced at once a violent change of ſituation, and were ſuddenly plunged into the darkneſs and barbariſm of their conquerors. As thoſe conquerors, however, embraced the Chriſtian religion, they ſubmitted implicitly to the diſcipline of the church, and to all the forms of eccleſiaſtical government which they had found eſtabliſhed. The Roman clergy, therefore, remained upon their former footing, and were far from loſing any of their former privileges; they even endeavoured,

deavoured, amidſt the general deſtruction of ſcience, to preſerve a degree of that literature which, in order to propagate and defend the tenets of their religion, they had been under the neceſſity of acquiring, and which was the great ſupport of their influence and popularity. With this view, and for the inſtruction of the people, more eſpecially of thoſe that were to be admitted into holy orders, they erected ſchools in their cathedrals and monaſteries, and thence laid the foundation of thoſe communities, poſſeſſed of eccleſiaſtical powers and privileges, which have received the excluſive appellation of *colleges*.

From theſe two circumſtances, from the groſs ignorance and the conſequent ſuperſtition of the people, and from the comparative knowledge and abilities of the clergy, the latter were enabled to reap the utmoſt advantage from their ſituation, and to acquire an almoſt unlimited aſcendency over the former. Hence the doctrines of the church concerning her influence in the remiſſion of ſins, and concerning the diſtribution of rewards and puniſhments in a future ſtate, came to be modelled in ſuch a manner as was plainly calculated to

promote her temporal intereſt. From this period, therefore, the donations of land to the church were greatly increaſed, and the biſhops, abbots, and other dignified clergymen, who reaped the chief advantage from theſe benefactions, became poſſeſſed of eſtates, which enabled them in ſome degree to rival the greater thanes of the country. From the ſame cauſes the contributions made by every congregation for the ſupport of their miniſter, were gradually augmented. To augment theſe contributions, and to render them permanent, the church employed the utmoſt addreſs and influence of all her members. What was at firſt a voluntary offering came afterwards, by the force of cuſtom, to be regarded as a duty. Having gradually raiſed this taxation higher and higher, the clergy, after the example of the Jewiſh prieſts, demanded at length a tenth part of the annual produce of land, as due to them by divine appointment. Not contented with this, they in ſome places inſiſted upon the ſame proportion of the annual induſtry; and it came to be maintained, that they had even a right to the tenth part of the alms given to beggars, as well as of the hire

hire earned by common proſtitutes in the exerciſe of their profeſſion*. To inforce the obligation of ſubmitting to theſe monſtrous exactions, was for a long time, it is ſaid, the great aim of thoſe diſcourſes which reſounded from every pulpit, and of the pious exhortations delivered by each ghoſtly father in private. The right of levying *tythes*, which was firſt eſtabliſhed in France, and which afterwards made its way through all the weſtern parts of Chriſtendom, created to the church a revenue of no leſs value than what ſhe derived from her landed poſſeſſions†. The tythes of every pariſh were collected by its own miniſter, but a large proportion of thoſe duties came to be demanded from the inferior clergy by the biſhop of the dioceſe.

When the provinces of the weſtern empire were broken into a number of independent kingdoms, it might have been expected that the church eſtabliſhment in thoſe countries would experience a ſimilar revolution, and that the clergy of every ſeparate kingdom, being

* F. Paul's History of Beneſices.

† The council of Mascon, in 585, excommunicated all those who refused to pay tythes. Ibid.

detached from thoſe of every other, would form a ſeparate eccleſiaſtical ſyſtem. It is not difficult, however, to diſcover the circumſtances which prevented ſuch a ſeparation; and which, notwithſtanding the various oppoſitions of civil government, united the church of all the weſtern countries of Europe in one great eccleſiaſtical monarchy.

The patriarchs of Rome and Conſtantinople, of whom the one, as has been already obſerved, became the head of the weſtern, and the other of the eaſtern part of Chriſtendom, were in a different ſituation with reſpect to the eſtabliſhment of their power and dignity. The patriarch of Conſtantinople, from his connection with the principal ſeat of government, appears for ſome time to have been exalted above his weſtern rival, and to have enjoyed ſuperior authority. But after he had attained a certain pitch of exaltation, the very circumſtance which had hitherto promoted his advancement, tended immediately to ſtop the progreſs of it; for no ſooner did he become an object of jealouſy to the civil power, than the vicinity of the imperial reſidence contributed the more effectually to thwart and controul every project

ject for the extenſion of his privileges. The Roman pontiff, on the other hand, when he had riſen to ſuch opulence and dignity as might have excited the envy and diſguſt of the civil magiſtrate, was, by the diſſolution of the weſtern empire, freed from the troubleſome inſpection of monarchs, who probably would have checked the growth of his power; and being placed in the ſituation of an independent prince, was at full liberty to put in practice every politic meaſure which might either enlarge his temporal dominions, or extend his authority over that numerous body of clergy who already owned his ſupremacy.

It may further explain the hiſtory of the weſtern church to obſerve, that while the biſhop of Rome was thus in a condition to avail himſelf of that ſuperiority which he had acquired, the circumſtances of the clergy were ſuch as made it their intereſt to unite in one body, and to court his protection. The character of churchmen was, from the nature of their profeſſion, a good deal different from that of the laity, and incited them to very oppoſite purſuits. The former, in a military and rude age, were generally drawn from the inferior ranks

ranks of life; at the ſame time that, from the prevalence of ſuperſtition, they poſſeſſed great influence over the minds of the people, and were daily advancing their claims to power and emoluments. By the ancient nobility, therefore, or leading men of every country, and ſtill more by the ſovereign, the haughtineſs, the inſolence, and the rapacity of theſe upſtarts, was often beheld with indignation and reſentment, and produced continual jealouſies and diſputes between thoſe different orders; the latter endeavouring to maintain and to extend a ſet of immunities and privileges, which the former were no leſs eager to reſtrain. In ſuch a conteſt the eccleſiaſtics of any particular kingdom were as much inferior to their adverſaries in direct force, as they were uſually ſuperior in ſkill and dexterity; and their ſituation naturally pointed out the expedient of ſoliciting aſſiſtance from their brethren in the neighbouring kingdoms. That aſſiſtance they very ſeldom failed to procure. The controverſy of every individual was regarded as the common cauſe of the whole order. By adhering to one another, however disjoined in point of civil government, they became ſufficiently powerful,

ful, not only to avoid oppreſſion, but even to defend their uſurpations; and by combining, like the ſoldiers of an army, under one leader, their forces were directed to the beſt advantage.

The opportunities which this great leader enjoyed, of augmenting his revenue, and of increaſing his power, may eaſily be conceived. In the multitude of diſputes which occurred between the clergy and laity in the different nations of Europe, the former, in order to obtain his protection, were obliged to ſubmit to various taxes, and to the extenſion of his prerogatives. Hence the payment of the *firſt fruits*, and ſuch other impoſitions upon the livings of churchmen, were eſtabliſhed in favour of the holy ſee.

In like manner, during the wars that were carried on between the different potentates of Europe, the contending parties, finding that the countenance and approbation of the Roman pontiff would give great weight and popularity to their cauſe, were ſometimes under the neceſſity of purchaſing his favour, by ratifying his titles, and permitting the exerciſe of his claims over their ſubjects. From the ſame circumſtances, the temporal dominions of the

pope

pope in Italy were greatly enlarged, and his authority, as an independent ſovereign, was recognized. Upon the conqueſt of Lombardy by the king of France, his holineſs, who had thrown his whole influence into the ſcale of that monarch, was rewarded with a great proportion of the conquered territory; and, at the ſame time, was enabled to aſſume the privilege of conferring the imperial dignity upon the conqueror.

The diſputes among the clergy themſelves, more eſpecially between the ſecular and regular clergy, were another ſource of the papal aggrandizement. Every ſociety of monks was ſubject originally to the biſhop within whoſe dioceſe their monaſtery was ſituated; but as they advanced in riches and popularity, they were led to aſſert their independence; and in ſupporting their pretenſions, having to ſtruggle with the whole body of ſecular clergy, they were induced to court the head of the church, by ſuch obedience and compliances as were likely to gain him over to their intereſt.

In the eaſtern church, where theſe cauſes did not operate in the ſame degree, neither the authority of the clergy, nor that of the patriarch

patriarch of Conſtantinople, roſe to the ſame height. The payment of tythes, though it was there warmly aſſerted by churchmen, as well as in the weſt, was never inforced by public authority; nor was the head of the church in that part of the world in a condition to eſtabliſh ſuch an extenſive revenue as had been acquired by the Roman pontiff.

It may be obſerved, on the other hand, that the ſame circumſtances which produced an independent eccleſiaſtical juriſdiction in Chriſtendom, have been productive of ſimilar effects in other religions, and in different parts of the world. Among illiterate nations, the clergy, by explaining the will of the Deity, or by directing myſterious rites and ceremonies, are naturally raiſed to great importance; and if many ſuch nations profeſs a common religion, and maintain an intercourſe with one another, their ſpiritual guides, by extending their ideas of a common intereſt beyond the bounds of a ſingle kingdom, are eaſily reduced under one great eccleſiaſtical leader. Hence an independent ſyſtem of church government is likely to ariſe.

This was formerly the ſituation of the Celtic nations,

nations, who inhabited a great part of Europe: they were under the influence of a common religion, the miniſters of which are ſaid to have poſſeſſed a juriſdiction ſuperior to that of the civil magiſtrate. Theſe *druids* were, at the ſame time, united in one ſociety, independent of the different political ſtates to which they belonged; and were under the direction of a *chief druid*, who reſided in Britain, and whoſe authority extended over the laity as well as the clergy, in all the nations of Celtic original.

The authority of the grand *Lama* or *high-prieſt* of the Tartars, which is acknowledged by many tribes or nations totally independent of one another, had, in all probability, the ſame foundation. This eccleſiaſtical monarch, who reſides in the country called Little Thibet, is alſo a temporal prince. The numerous clergy, in the different parts of Tartary, who acknowledge his ſupremacy, are ſaid to be diſtinguiſhed into different ranks or orders, ſomewhat analogous to thoſe which take place in Chriſtendom; and the ordinary prieſts, or lamas, are ſubjected to the authority of biſhops, whoſe juriſdiction is ſubordinate to that of the ſovereign pontiff. Without pretending to aſcertain,

tain, with any degree of accuracy, the church-hiſtory either of the Celtic or Tartar nations, we cannot avoid remarking the general analogy that appears in the origin and conſtitution of all theſe different Hierarchies.

SECTION II.

The Eſtabliſhment of Chriſtianity in Britain, under the Roman Dominion, and in the early Government of the Anglo-Saxons.

CHRISTIANITY made its way into Britain, in the ſame gradual manner as into all the other parts of the Roman empire. It is ſuppoſed to have obtained a permanent footing in the country, under the government of Marcus Aurelius, at which time a biſhop of Rome is ſaid, upon the application of Lucius, a Britiſh king, to have ſent over, to this iſland, ſeveral learned men, to preach and propagate the goſpel. But whatever degree of credit may be due to this account, it is certain that, in the reign of the emperor Conſtantine, this religion was taken under the protection of government,

government, in Britain, as well as in all the other provinces of Rome; and that it continued in this ſituation until the iſland was abandoned by the Romans. During this period the Chriſtian church had received the ſame form as in all the other parts of the empire. Particular clergymen had obtained a ſettlement in ſmall diſtricts or pariſhes, according to the number and ſituation of the inhabitants *. Many of theſe diſtricts were united under the inſpection of a biſhop, the miniſter of a cathedral church; and a metropolitan, or archbiſhop, was exalted over the whole clergy of a province. But though it is probable that this eccleſiaſtical eſtabliſhment was modelled according to the ſituation of the great towns, and the chief diviſions introduced by the civil government of the country; yet neither the number of the Britiſh prelates, nor the churches in which they were ſettled, appear to be known with any degree of certainty †. Men-

Gildas.—Alſo Whitaker, Hiſt. of Manchester.

† According to the monkish tradition, there were twenty-eight bishops in Britain, during the Roman government of that island. These corresponded to the twenty-eight considerable

tion is made of three archbiſhops, who, it ſhould ſeem, correſponded to three of the provinces, in the late arrangement which the Romans made of their Britiſh territories. The firſt reſided in London; the ſecond in York; and the third, whoſe juriſdiction extended over Wales, appears, at different times, to have had a different place of reſidence *. That the Hierarchy had early acquired a ſettled condition in Britain, and that its biſhops held ſome rank among thoſe of other churches, is evident from their ſending repreſentatives to the council of Arles, called in the year 314, and to other remarkable councils, that were afterwards convened in different parts of Chriſtendom †.

The arrival of the Saxons in this iſland was productive of great diſorder in the religious, as well as in the civil eſtabliſhment. In thoſe parts of the country which fell under the dominion of the Saxons, the Chriſtian churches

considerable cities in the province. See Ranulph. Higden. lib. i.—This number of British cities is mentioned by Gildas, Bede, and others; and their names are transmitted by Nonnius.

* Ranulph. Higden. lib. i. † Stillingfleet, Orig. Britan.

were frequently demoliſhed; the public worſhip was interrupted; and the clergy, in many caſes, could neither be provided with a maintenance from the public, nor continue the regular exerciſe of their juriſdiction. The altars of Thor, and Woden, were often ſubſtituted for thoſe of Jeſus Chriſt; and the life and immortality which had been brought to light by the goſpel, were obſcured and eclipſed by the fictions of Hela's dreary abode, and Valhalla's happy manſions, where heroes drink ale and mead from the ſculls of enemies whom they have ſlain in battle.

Wherever the ancient inhabitants were able to preſerve their independence, their eccleſiaſtical policy remained without any alteration. This was particularly the caſe in the whole weſtern part of the iſland, from the ſouthmoſt point of Cornwall to the Frith of Clyde; not to mention the country to the northward, which the arms of the Saxons had not penetrated. In the territories where that people had formed their ſettlements, there is ground to believe that, after the tumult and violence attending the conqueſt had ſubſided, the two nations frequently maintained an amicable corre-

correſpondence, were in ſome meaſure united in one ſociety, and enjoyed the free exerciſe of their religion *. As their long neighbourhood produced, by degrees, a communication of civil inſtitutions and cuſtoms, it was likewiſe, in all probability, attended with ſome approximation of religious opinions and obſervances; and in this particular, it can hardly be doubted that the regular and well-eſtabliſhed ſyſtem of Chriſtianity, to ſay nothing of its genuine merit in other reſpects, would have great advantage over the unformed and looſely connected ſuperſtition of the barbarians. In the ardour of making proſelytes, and in the capacity of propagating their tenets, the profeſſors of the former muſt have greatly ſurpaſſed thoſe of the latter; and it was natural

* This was so much the case, that among the East Angles, according to the testimony of Bede, the Christian worship, and the Saxon idolatrous rites, were performed in one and the same church; such good neighbourhood was maintained between the two religions. "Atque in eodem fano et altare haberet ad sacrificium Christi et Arulam ad victimas dæmoniorum. Quod videlicit fanum, ex ejusdem provinciæ Alduulf, qui nostra ætate fuit, usque ad suum tempus perdurasse, et se in pueritia vidisse testabatur." Bed. Hist. Eccl. lib. ii. ch. 15.

to expect that the Saxons in England would at length follow the example of all the rude nations, who had ſettled in the provinces upon the continent, by adopting the religion of the conquered people.

What laid the foundation for a general and rapid converſion of the Saxons, was an event, which happened about an hundred and fifty years after their ſettlement in Britain. Ethelbert, the ſovereign of Kent, having married Bertha, the daughter of a king of the Franks; this princeſs, already a Chriſtian, made open profeſſion of her religion, and brought over a French biſhop to reſide at the Kentiſh court. This incident ſuggeſted to the Roman pontiff, Gregory the great, a man of unbounded ambition, the idea of converting the Anglo-Saxons to Chriſtianity, and, at the ſame time, of eſtabliſhing his authority over the Britiſh clergy, who had hitherto neither acknowledged the papal juriſdiction, nor yielded an exact conformity to the tenets and obſervances of the Roman church. For theſe two purpoſes, he gave a commiſſion to Auguſtine, one of the monks of a convent at Rome, with about forty aſſiſtants, to preach and propagate the goſpel in Britain.

Britain*. By the induſtry of theſe, and of ſucceeding miſſionaries, the Chriſtian religion was, in the courſe of about half a century, eſtabliſhed univerſally in all the kingdoms of the Heptarchy. The authority of the church of Rome went hand in hand with Chriſtianity; and though the Britiſh clergy ſtruggled for a conſiderable time to maintain their independence, and their peculiar doctrines, they were at length borne down by the prevailing ſyſtem, and reduced into a ſubordinate branch of the Roman Hierarchy †.

The converſion of the Anglo-Saxons has been commonly regarded as an entirely new plantation of the goſpel, in the territories which fell under the dominion of that people; and it ſeems to be imagined, that when Auguſtine entered upon his miſſion, there were no traces of Chriſtianity remaining in thoſe parts of the country. This opinion appears to have ariſen, partly from the ſuppoſition, that the ſettlement of the Anglo-Saxons was

* Bed. Hist. Ecclesiast. lib. i. c. 23. 25.

† Bed. Hist. Eccles. lib. ii. seq.—Stillingfleet, Origin. Brit.—Henry's Hist. of Great Britain.

accompanied with a total expulſion of the ancient inhabitants, and partly from a diſpoſition in ſubſequent eccleſiaſtical writers to undervalue that ſyſtem of church-diſcipline and faith which had obtained in Britain, before it was fully ſubjected to the papal juriſdiction.

With reſpect to the general extirpation of the Britons, it ſeems to be a perfect chimera. Neither is there any reaſon to believe that they underwent any perſecution from the Saxons upon account of their religion. The rude polytheiſm, profeſſed by thoſe conquerors, does not ſeem to have taken a firm hold of their minds, or to have inſpired much animoſity againſt foreign deities or modes of worſhip; and if, during the immediate conqueſt of the country, the Britiſh clergy were ſometimes plundered or maſſacred, this, in all probability, proceeded from no peculiar enmity to their religion, but from the ferocity natural to barbarians, who, in the heat of a military enterprize, could not be expected to ſhew much regard to the diſtinction of characters or profeſſions. The effect of theſe diſorders, however, was only partial and temporary. It appears that, even in thoſe parts of the country where

where the Saxons had remained the longeſt, the ancient church buildings were far from being entirely deſtroyed; for we learn from Bede, that, upon the arrival of Auguſtine in Kent, he firſt preached in a church, which had been erected by the Romans in honour of St. Martin, and that ſoon after, when the monarch of that kingdom had been baptized, orders were given to build or *repair* churches, for the accommodation of the Chriſtian miſſionaries *.

Upon the full reſtoration of Chriſtianity in thoſe parts of the country where it had been corrupted by the mixture of Saxon ſuperſtition, the religious eſtabliſhments, which had been introduced under the dominion of the Romans, and which had always been preſerved in the unconquered parts of the iſland, were completely revived; with this difference, that the Britiſh churches, in the degree of their ſubmiſſion to the papal authority, were brought into a greater conformity with the churches upon the continent. It is probable that the ancient parochial diviſions had not been entirely loſt; more eſpecially in thoſe diſtricts,

* Hist. Eccles. l. i. c. 26.

which the Anglo-Saxons had but recently ſubdued when they embraced the religion of the former inhabitants *.

The number of biſhops, it is natural to ſuppoſe, and the extent of their juriſdiction, were likewiſe directed, in ſome meaſure, by the antecedent arrangements in the provincial government of Britain; though, from the changes produced in the ſtate of the country, many variations were, doubtleſs, become neceſſary. Of the three *archbiſhops*, who had formerly acquired a pre-eminence over the whole of the Britiſh clergy, one appears to have been ſunk by the disjunction of Wales from the Engliſh monarchy; ſo that there came to be only two metropolitans under the Saxon eſtabliſhment. The archbiſhop of the northern department reſided, as formerly, at York; but the ſeat of the other, from the reſidence of Auguſtine, who obtained the chief eccleſiaſtical dignity, was transferred from London to Canterbury †.

The revenue for maintaining the clergy was the ſame in Britain as in all the churches

* Whitaker, Hiſt. of Manchester; and the authorities quoted by him.

† Ranulph. Higden. lib. i.

acknow-

acknowledging the juriſdiction of the Roman pontiff. It conſiſted, partly of contributions levied in every pariſh; and partly of landed eſtates, which the ſuperſtition of the people had led them to bequeath for pious uſes: but the former of theſe funds remained longer than in the more ſouthern parts of Europe, before it was converted into a regular tax, and exalted to a tenth of the whole yearly produce.

CHAP. VI.

Inſtitution of Tythings, Hundreds, and Counties.

IN every nation it muſt be a great object to provide for defence againſt the invaſion of neighbouring ſtates; but in a rude age, the proviſions requiſite for this purpoſe are few and ſimple. The great body of the people are ſoldiers, willing and ready to take the field whenever their ſervice is neceſſary. From the mutual depredations frequent among a rude people, they become inured to hardſhips, and familiar with danger; and having little employment at home, they are glad to embrace every opportunity of acquiring military reputation, or of enriching themſelves with the ſpoil of their enemies. Every perſon, therefore, as ſoon as he is capable of uſing arms, is accuſtomed to the uſe of them, and acquainted with the ſimple manner of fighting practiſed among his countrymen; ſo that, as the chief magiſtrate finds no difficulty in raiſing troops upon any occaſion, he is put to little or no trouble in training and preparing them

them for thoſe military operations in which they are to be engaged.

The appointment of certain leaders in particular diſtricts, to collect the forces upon any emergency, and to command them in time of battle, ſeems to be all that is wanted, in ſuch a ſituation, for putting a whole kingdom in a complete poſture of defence. A few regulations of this nature, ariſing obviouſly from the circumſtances of a barbarous people, were, at an early period, eſtabliſhed among the Saxons in England, as well as among their neighbours upon the continent.

Every feudal ſuperior was the military leader of his own dependents; but upon the ſettlement of the Saxons in Britain, the landed eſtates acquired by the greater part of individuals were at firſt ſo ſmall as to render the number of their vaſſals inconſiderable; and the *allodial* or independent proprietors were therefore under the neceſſity, amidſt the diſorder that prevailed in thoſe times, of aſſociating for mutual protection and ſecurity. Different families, connected by the ties of conſanguinity, or otherwiſe, found it expedient as well as agreeable to ſettle in the ſame neighbourhood,

that

that they might on all occaſions be in a condition to aſſiſt one another. Thus the inhabitants came to be diſtributed into villages of greater or leſs extent, according to circumſtances; and the members of every village, accuſtomed from their infancy to live together, and finding themſelves united by a common intereſt, were led to acquire the ſtrongeſt habits of intimacy and attachment. Theſe little ſocieties received the appellation of *vills*, *towns*, or *free-bourgs*.

As theſe villages were formed upon the plan of defence, and were frequently employed in the exerciſe of hoſtilities, there naturally aroſe in each of them a leader, who by having the privilege of conducting their military enterpriſes, obtained alſo a degree of authority in the management of civil affairs. To this perſon the name of *head-borough* or *borſholder* (a word ſuppoſed by ſome to be contracted from *borough's elder*) was commonly given.

According to the early policy of the Anglo-Saxons, each of their villages was divided into ten *wards*, or petty diſtricts; and hence they were called *tythings* or *decennaries*, as their leader was denominated a *decanus* or *tything-man*.

man. This regulation appears to have been extended over all the kingdoms upon the neighbouring continent; and in all probability it originated from the influence of eccleſiaſtical inſtitutions*.

As, upon the firſt eſtabliſhment of Chriſtianity under the Roman dominion, the form of church government was in ſome reſpects modelled by the political conſtitution of the empire; ſo the civil government, in the modern ſtates of Europe, was afterwards regulated in many particulars according to the ſyſtem of eccleſiaſtical policy. When the weſtern provinces of the Roman empire were conquered by the barbarous nations and erected into ſeparate kingdoms, the conquerors, who ſoon embraced the Chriſtian religion, and felt the higheſt reſpect for its teachers, were diſpoſed in many caſes to improve their own political inſtitutions, by an imitation of that

* The term *free-burg* is sometimes applied not to the whole tything or village, but to each of thoſe wards into which it was divided. [See the laws ascribed to William the conqueror. Wilkins, c. 32.] But more frequently a free-burg and tything are understood to be synonymous. See the Gloſſaries of Spelman and Du Cange, v. *Friborga*.

regularity

regularity and ſubordination which was obſerved in the order and diſcipline of the church.

In the diſtribution of perſons, or of things, which fell under the regulation of the Chriſtian clergy, it appears that, in conformity to the cuſtoms of the Jewiſh nation, a decimal arrangement was more frequently employed than any other. By the Moſaic inſtitution the people were placed under rulers of thouſands, of hundreds, of fifties, and of tens. A Jewiſh ſynagogue, correſponding to a modern pariſh, appears at a ſubſequent period to have been put under the direction of *ten elders*, of whom one became the chief ruler of that eccleſiaſtical diviſion*. A tenth part of the annual produce was appropriated for the ſupport of the Levites, as the ſame proportion of eccleſiaſtical livings was claimed by the high-prieſt. Hence we

* Dr. Lightfoot's Harmony of the Four Evangelists, part 3. on Luke chap. 4. ver. 15.—Lewis's Antiquities of the Hebrew Republic, b. 3. ch. 21.—Goodwin's Moses and Aaron, b. 2. ch. 2.—also Vitringa Archisynagogus illustratus.—This author agrees with Dr. Lightfoot, in supposing that the *decem otiosi*, mentioned as requisite in every synagogue, were officers employed in the business of that society; though he differs as to the particular employments that were allotted to them.

find

find that in modern Europe, the members of a cathedral church, as well as thoſe of a monaſtery, were divided into ten branches, each of which was put under a director, and the tenth of theſe perſons, or *decanus*, was intruſted with a ſuperintendence of all the reſt*. Hence too the modern inſtitution of tythes, and the pretenſions of the Roman pontiff, the Chriſtian high-prieſt, to the tenth of all the revenues of the clergy†.

When the weſtern part of Europe, upon the diſſolution of the Roman government, had been reduced into a ſtate of barbariſm, by which the inhabitants were neceſſarily divided into ſeparate villages or ſmall towns, each of

* Burn's Eccles. Law.—Kennet's Paroch. Antiq.

† Though the distribution of persons and things according to *tens*, appears to have been immediately borrowed by the Christian clergy from the Jews, we find among many other nations a tendency to follow the same arrangement. Those natural instruments of notation, which every man carries about with him, the fingers, have probably been the original cause of the common arithmetical progression by *tens*, and of the general propensity to be governed by this number in the classification of objects.—The land-tax upon the ancient Roman provinces is said to have been a tenth of the produce.

thoſe

thoſe little communities was naturally formed into one congregation, and annexed to a ſingle church. The ſame people who joined in public worſhip were alſo combined in their military expeditions; and the ſame arrangement, under different rulers, that had been adopted in the former capacity, was eaſily communicated to them in the latter. This diviſion of a village, with the correſponding territory belonging to its inhabitants, into ten little *wards* or *diſtricts*, probably aroſe in thoſe European kingdoms which had firſt attained a regular form, and was afterwards extended to the Saxons in England, and to the inhabitants of other countries, who remained longer in a ſtate of anarchy and confuſion.

But while the members of every Anglo-Saxon town or village were thus intimately united, a connection of the ſame ſort was gradually introduced between the inhabitants of a larger territory. Thoſe who belonged to different towns or villages in the ſame neighbourhood had frequently occaſion to aſſiſt one another againſt a common enemy; and in conſequence of many joint expeditions, directed by a ſenſe of mutual intereſt, were induced to form

form a regular aſſociation, under a permanent military officer.

The extent of theſe aſſociations was at firſt perhaps arbitrary and variable, but was at length ſettled in an uniform manner, according to the ſyſtem of eccleſiaſtical policy which prevailed both in England and in other European kingdoms. Upon the principle which has been formerly mentioned, every ten churches of a dioceſe were united under an eccleſiaſtical inſpector, who in England, in contradiſtinction to a ſimilar officer belonging to a cathedral or monaſtery, was called a *rural dean* *. In like manner every ten villages or tythings, which were of the ſame extent with pariſhes, formed a military diſtrict, which obtained the appellation of a *hundred*, and its commanding officer that of a *centenarius* or *hundreder* †.

The connections of ſociety being ſtill farther extended, the members of different hundreds

* Kennet's Paroch. Antiq.——Burn's Eccles. Law. v. *Dean and Chapter*.

† Hundredus autem Latinè, says Ralph Higden, ſive Cantredus, Wallicè et Hibernicè, continet *centum villas*. [Polychronicon, lib. i.]

were alſo aſſociated for their common defence, and fell under the direction of a greater officer, called the *heretoch*, a title which, in the Saxon language, is ſynonymous with that of duke, and which appears to have been originally given to ſome of thoſe leaders in the Heptarchy, who afterwards aſſumed the title of kings. The diſtricts belonging to theſe heretochs, which were greater or leſs according to accidents, and had been varied on different occaſions, were gradually aſcertained and eſtabliſhed, ſo as at length to correſpond entirely with the territories that were placed under the eccleſiaſtical juriſdiction of the ſeveral biſhops. Theſe diſtricts were called *ſhires*; and the officer who preſided over them ſeems, at a later period of the Anglo-Saxon government, to have changed his title for that of *alder-man* or *earl*. It is a common opinion, however, that the heretoch and the alder-man were different perſons, intruſted with different departments; and that the former was the chief military, as the latter was the chief civil officer of the ſhire.

In ſome parts of the country a ſmaller number of hundreds were aſſociated, ſo as to com-

poſe an intermediate diſtrict, called *lathe, rape*, or *trything*; and ſeveral of theſe diſtricts were united in forming a ſhire. But this arrangement, peculiar to ſome ſhires, and depending upon the ſame principles with the diviſions already mentioned, is of little conſequence in our preſent view of the ſubject.

Such were the military inſtitutions of the Anglo-Saxons; which appear to have ariſen almoſt imperceptibly from the rude ſtate of the country, from the natural diviſions of the people, and from their progreſſive attempts in forming more extenſive and permanent aſſociations.

From the great deficiency of Saxon records, there are, concerning theſe inſtitutions, many particulars, which remain in obſcurity, and which have given riſe to various diſputes and conjectures. The earlieſt hiſtorians, who have ſaid any thing upon this ſubject, appear, for the moſt part, to have lived at a period when theſe inſtitutions had undergone many variations, and in ſeveral reſpects had fallen into diſuſe. They were, at the ſame time, ignorant annaliſts of a barbarous age; and their accounts, which appear to have been chiefly derived

from tradition, are ſhort and unſatisfactory. It ſeems to have been uniformly imagined by theſe authors, that the inſtitutions above mentioned were peculiar to the government of the Anglo-Saxons; and that they were introduced by the ſingular policy of king Alfred, to whom the admiration of Engliſh writers has commonly aſcribed every important regulation during the Saxon period. But it is now generally known, that the eſtabliſhment of tythings, hundreds, and ſhires, was prior, in England, to the time of Alfred; and that it was not peculiar to this country, but was probably extended over all the barbarous nations who ſettled in the provinces of the weſtern empire.

With reſpect to the eſtabliſhment of tythings and hundreds, it has been the general opinion that the former conſiſted of ten families, and that the latter, of courſe, were compoſed of an hundred families. That ſuch was the exact number of families comprehended in each of theſe diviſions, the reſpective names affixed to them appear to have been thought ſufficient evidence.

But when we examine this opinion, after all the pains that have been taken by late writers

to

to render it plauſible, it ſeems to be attended with inſuperable difficulties. To divide the whole people into military parties of ten and of an hundred families, without any regard to their places of reſidence, would mark a degree of art and contrivance hardly to be expected in a barbarous age: not to mention that it would be a moſt abſurd regulation, as it would frequently ſeparate near relations, and place them under the command of different officers, inſtead of uniting them under one common leader, with whom they had acquired a natural connection; for as the accidental collections of kindred and acquaintance, who lived in the ſame village or neighbourhood, could not be regularly compoſed of ten families, nor of any given number, they muſt of neceſſity have been ſplit and jumbled with ſtrangers, to make up the ſeveral tythings into which the people were thus artificially divided. If ſuch a regulation ever had place in England, we muſt ſuppoſe that it was introduced by a political projector, neglecting, for the ſake of a finical regularity, to avail himſelf of the uſual ſources of authority in a rude nation, and by a legiſlator inveſted with ſuch abſolute power, as might

render him capable of enforcing meaſures diametrically oppoſite to the natural courſe of things; a ſuppoſition which is neither applicable to the character nor to the condition of the early monarchs of Britain.

As the inſtitution of tythings, together with that of hundreds, and of ſhires or counties, was not limited to England, but had place in moſt, if not all of the feudal countries, there is good reaſon to believe that it was not derived from artificial or diſtant views of policy, ſuggeſted to any particular prince; but that it proceeded from a concurrence of circumſtances in the European kingdoms, by which it was recommended to the great body of the people.

That a tything was originally the ſame thing with a village, and that it did not comprehend any preciſe number of perſons or families, may be concluded from this, that in the ancient law-language of England the words *vill*, *town*, *decennary*, and *tything*, have all the ſame ſignification *. If a tything have the ſame meaning with a vill or town, it is ſurely impoſſible that it can ſignify a collection of ten families only, without relation to the place of their

* Blackſtone's Comment. Vol. I. Introd. § 4.

reſidence.

reſidence. Should we, on the other hand, ſuppoſe that a tything was regularly compoſed of ſo many families, the members of the ſame tything muſt frequently have reſided in different towns or villages; in which caſe it would ſometimes be neceſſary, in deſcribing or pointing out thoſe perſons, to mention the *town* which they inhabited, as diſtinct from the tything to which they belonged; and theſe two terms therefore, ſo far from being ſynonymous, would come, upon ſuch occaſions, to be uſed in direct oppoſition to each other.

But what puts this matter in a yet more conſpicuous point of view, is an early regulation mentioned by the Engliſh lawyers, that every tything ſhould have a church, with celebration of divine ſervice, ſacraments, and burials*. If the limits of a tything, and of a town or village, were the ſame, ſuch a regulation would naturally be eſtabliſhed. Its eſtabliſhment, on the other hand, affords complete evidence that a pariſh and a tything were of the ſame extent. But how is it poſſible to conceive that a pariſh comprehended only ten families? According to this doctrine every

* Blackstone's Comment. Vol. I. Introd. § 4.

eleventh houſe muſt have been a church, and the clergy muſt have compoſed the eleventh part of the whole people.

To obviate this objection, it is held by ſome authors that a family is not to be underſtood in a literal ſenſe, but as comprehending all the vaſſals and tenants of a proprietor, who in ſome caſes were pretty numerous. Admitting, however, this explanation in its fulleſt extent, it will only vary, inſtead of removing the difficulty. It would ſtill be in vain to expect that a village or town ſhould always contain exactly ten of theſe enlarged families, or even any number of tens; ſo that it would often be requiſite to patch up a tything from the remnants of different towns or villages; and it would follow that theſe outcaſts did not belong to the church in their neighbourhood, but, however diſperſed over the country, and intermixed with other pariſhes, were united in one congregation, and were provided with a ſeparate church and miniſter of their own.

The eſtabliſhment of tythings, hundreds, and ſhires, was primarily intended for the mutual defence of the inhabitants, but it was likewiſe rendered ſubſervient to other very ſalutary purpoſes.

purpoſes. When the people had been aſſembled in thoſe meetings to engage in a military enterprize, or upon the concluſion of it to divide their booty, they had occaſion to hear complaints of the injuries and diſorders committed among themſelves. Every feudal ſuperior was the natural judge of his own tenants and vaſſals; but when a diſpute had ariſen between different allodial proprietors of the ſame tything, there was no ſingle perſon poſſeſſed of ſufficient authority to terminate the difference. The parties being independent of each other in point of property, and therefore maſters of their own conduct, were under no neceſſity, in a matter of that kind, of ſubmitting to the orders of any individual. They acted in the ſame manner with reſpect to the exerciſe of their civil rights, as with relation to peace and war. In both caſes they conſidered themſelves as free men, ſubject to no reſtraints, but ſuch as aroſe from the nature of their confederacy, or were impoſed by their common conſent.

The ſame motives, however, which induced a village or tything to enter into joint meaſures for their defence againſt a foreign enemy, determined them alſo to take precautions for compoſing

compoſing animoſities and differences among their own members. Rouſed by the danger of a quarrel which might be fatal to their union, and which might render them an eaſy prey to their neighbours, they readily interpoſed with all their influence to reconcile the parties, and to enforce their obſervance of the rules of juſtice. A judicial power was thus gradually aſſumed by every tything over the allodial or independent proprietors of which it was compoſed. The hundred, in like manner, came to exerciſe a power of determining the differences between the members of the ſeveral tythings, within the bounds of that larger diſtrict; as the meetings of the ſhire eſtabliſhed a ſimilar juriſdiction over the different hundreds comprehended in that extenſive territory. Theſe courts took cognizance of every cauſe, whether civil or criminal; and as they enjoyed the ſole juriſdiction, in the firſt inſtance, within the reſpective boundaries of each, they became naturally ſubordinate one to another; ſo that from the deciſion of the tything there lay an appeal to the hundred, and the ſentences of this latter tribunal were reviewed in the greater meetings of the ſhire.

Theſe

Theſe courts were held originally by all the allodial proprietors of each particular diſtrict; and the ſame perſons had the ſame right of preſiding in their judicial procedure, as when their meetings were called to deliberate upon military affairs.

It is probable that every kind of law-ſuit was at firſt determined in full aſſembly, and by a plurality of voices; but in the larger meetings of the hundred, and of the ſhire, it ſhould ſeem that when the authority of thoſe tribunals had been confirmed by cuſtom, and their duty had become ſomewhat burdenſome by the increaſe of buſineſs, convenience introduced a practice of ſelecting a certain number of their members, to aſſiſt their preſident in the determination of each particular cauſe. Hence the origin of *juries*, the preciſe date of whoſe eſtabliſhment is uncertain, becauſe it probably aroſe from no general or public regulation, but from the gradual and almoſt imperceptible changes, authorized by common uſage in the ſeveral diſtricts of the kingdom. The number of jurymen was for ſome time different upon different occaſions; till the advantages of an uniform practice produced a general rule, which determined

determined that no leſs than twelve perſons ſhould be called in all ordinary cauſes*

* The custom of choosing twelve men for distributing justice, is frequently mentioned in the Anglo-Saxon laws. Thus, in a law of king Ethelred, it is said, "Et ut habe-"antur conventus in quolibet wapentachio, et exeant seni-"ores duodecim thani, et prefectus cum iis, et jurent super "sanctuarium quod iis in manus datur, quod nolent ullum "innocentem accusare, nec aliquem noxium celare."—[Wilkins, p. 117.] In another law, ascribed to the same king, commonly called the *senatus consultum de monticulis Walliæ*, it is enacted, for the mutual benefit of the English and Welch, that controversies between them shall be determined by twelve law-men, the half of whom shall be Englishmen, the other half Welchmen. [Wilkins, p. 125.]

These twelve persons correspond, it should seem, to the *Racimburgi* and the *Scabini*, who under the first and second races of the kings in France assisted in the decisions of the count and of the centenarius.

It has been supposed by some authors that neither of these were upon the footing of modern jurymen, chosen out of the free men of a district for each cause, but that both were permanent assessors of the magistrate and members of the court. See Brady's complete Hist. of Eng.—Hickes's Diss. Epistol.

But that either these twelve men, or the Racimburgi or Scabini, were permanent members of the court, appears improbable, for the following reasons: 1. Because these twelve men were chosen among the *thanes*; and it is not likely that the same persons, of that rank, would subject themselves

Concerning the inſtitution of tythings, there is one regulation, connected with the adminiſtration of juſtice, that has been much taken notice of by hiſtorians, and has excited the admiration of all political writers: the members of every tything are ſaid to have been reſponſible for the conduct of one another; and the ſociety, or their leader, might be proſecuted, and compelled to make reparation for an injury committed by any individual.

If we look upon a tything as regularly compoſed of ten families, this branch of its police will appear in the higheſt degree artificial and ſingular; but if we conſider that ſociety as of

themſelves to the drudgery of being conſtant aſſeſſors to the magiſtrate. 2. The number of *Racimburgi* or *Scabini* appears to have been varied, according to the importance of the cauſes which they decided. This ſuppoſes a new election in each cauſe. 3. If there was a regular bench of aſſeſſors to the chief magiſtrate of a county, it is wonderful that no traces of that inſtitution ſhould be found at preſent, more eſpecially in Scotland, where the county-courts have been continued upon the ancient footing.

Accordingly Horn, an author who lived in the time of Edward I. ſays expreſsly, in his *Mirroir de Juſtices*, that king Alfred put to death a number of his judges for deciding cauſes without a jury.

the

the ſame extent with a town or village, we ſhall find that ſuch a regulation is conformable to the general uſage of barbarous nations, and is founded upon their common notions of juſtice.

Among barbarians in all parts of the world perſons who belong to the ſame family are underſtood to enjoy a community of goods, and to be all jointly ſubjected to the ſame obligations. In thoſe early ages when men are in a great meaſure ſtrangers to commerce, or the alienation of commodities, the right of *property* is hardly diſtinguiſhed from the privilege of *uſing* or *poſſeſſing*; and thoſe perſons who have acquired the joint poſſeſſion of any ſubject are apt to be regarded as the joint proprietors of it. At the ſame time, when a debt is contracted by one of ſeveral perſons who have a perfect community of goods, it muſt of neceſſity be diſcharged from the common funds; and the obligation of every individual becomes therefore a burden upon the whole ſociety.

After a family has been enlarged, and ſubdivided into different branches, their poſſeſſions are not upon this account entirely ſepa-

rated,

rated, nor their notions of common property altogether effaced. Though the different families, who are thus formed into a tribe or village, reſide in different houſes, their neighbourhood allows them ſtill to maintain a promiſcuous intercourſe; and their ſituation diſpoſes them to act in concert with each other in all their important employments and purſuits. As, in their expeditions of war and hunting, they go out in a body, ſo, according to the primitive ſtate of agriculture, they labour in the field, and gather in the harveſt in common; and what has been acquired by their united exertions, before it is divided among them by conſent, is naturally conceived to be the joint property of all.

It is no hardſhip, that perſons connected in ſo intimate a manner ſhould be liable for the obligations of one another; and when an individual has become bound to a ſtranger, who cannot eaſily know for whoſe benefit the debt was incurred, it ſeems reaſonable that the creditors ſhould be allowed to demand payment from the community, who alone have acceſs to diſtinguiſh the rights of their particular members.

But

But the greater part of the debts contracted in a barbarous age ariſe from injuries and hoſtilities: for which it is uſual to make atonement by pecuniary compoſitions: and as in ſuch caſes it commonly happens, either that the offence was originally committed by a whole village, or, if it aroſe from a ſingle individual, that the quarrel was afterwards adopted and proſecuted by the other members of the community, this appears a ſufficient reaſon for ſubjecting them to a ſhare of the puniſhment.

Thus, by the general cuſtom of rude nations, the vengeance of the injured party for murder and other atrocious crimes is not confined to the guilty perſon, but is extended to his family, and even to the whole village or tribe of which he is a member. The proſecution of claims, founded upon this general cuſtom, makes a conſiderable part of the hiſtory of mankind in the early periods of ſociety. Traces of this primitive law of nations may be diſcovered even in ſome civilized countries; where, upon account of enormous offences, the criminal, together with his innocent children, and other relations

relations, have been condemned to one common puniſhment*.

Among the Jews, when a perſon was found murdered in the neighbourhood of a city, and the murderer was unknown, it ſeems to have been thought that the puniſhment might with juſtice be extended to all the inhabitants; who are, upon that account, directed to perform an expiatory ſacrifice. "And all the elders of "the city that is next unto the ſlain man, ſhall "waſh their hands over the heifer that is be-"headed in the valley. And they ſhall an-"ſwer and ſay, Our hands have not ſhed this "blood, neither have our eyes ſeen it. Be mer-"ciful, O Lord, unto thy people Iſrael, whom "thou haſt redeemed, and lay not innocent "blood unto thy people Iſrael's charge. And "the blood ſhall be forgiven them†.

When it is cuſtomary to demand ſatisfaction from a whole village for the higheſt perſonal injuries committed by an individual, it cannot appear ſurpriſing that the ſame privi-

* See inſtances of this quoted by the acute author of The Hiſtorical Law Tracts.

† Deuteron. chap. xxi.

lege ſhould be claimed upon account of the ordinary violations of property.

I am aſſured, from the moſt reſpectable authority, that, in the villages belonging to the Highlands of Scotland, a rule of this kind has been immemorially eſtabliſhed. The ſtealing of cattle was formerly the only ſpecies of theft from which the inhabitants of that country could ſuffer any great prejudice; and when ſtolen cattle could be traced within the diſtrict of any particular village, the inhabitants were liable to repair the damage, unleſs they could point out the track of the cattle, paſſing again without their territories. This law, which was founded merely upon long uſage, remained in force at leaſt as far down as the beginning of the preſent century*.

It was a cuſtom, we are told, among the ancient Iriſh, " that the head of every *ſept*, and " the chief of every kindred, or family, ſhould " be anſwerable and bound to bring forth " every one of that ſept, and kindred under it, " at all times, to be juſtified, when he ſhould

* It does not ſeem to be ſupposed by hiſtorians, that the Saxon regulations concerning tythings were extended to a country ſo inaccessible as the Highlands of Scotland.

" be

"be required, or charged with any treaſon, "felony, or other heinous crime*." The Iriſh law, in this as well as in other particulars, was probably analogous to that of the other Celtic nations.

From the code of Gentoo laws publiſhed in 1776, it appears that a ſimilar regulation has been introduced among the ancient inhabitants of Indoſtan. If the footſteps of a thief have been traced, or if ſtolen goods are found, within a certain diſtance from any town, the thief is preſumed to be concealed in it.—And whenever a robbery or theft is committed in the neighbourhood of any town or city, the *head-perſon* of that town or city is bound to make up the loſs†.

Upon ſome parts of the coaſt of Guinea, the villages or towns, it ſhould ſeem, are liable for the obligations of every ſort contracted by any of their members; for we are informed, that when a perſon in that country neglects to pay a debt, the creditor is under no neceſſity of arreſting the real debtor, but, in the diſtrict, where he reſides, has the liberty of ſeizing, at

* Spencer's View of the State of Ireland.

† Code of Gentoo laws, ch. 17. sect. 4. 6.

pleaſure, ſuch a quantity of goods as will ſatisfy the demand, leaving the ſufferers to indemnify themſelves in the beſt manner they can *.

About the middle of the thirteenth century, it appears that the ſtates of Germany had very generally adopted a ſimilar practice; which is mentioned by hiſtorians as a proof of uncommon rudeneſs and barbariſm †.

* Hist. Gen. des Voyages. Mod. Univ. Hist.

† The following passage is quoted from Pfefel's Abrégé Chron. de l'Histoire d'Allemagne. "Je ne puis passer sous silence une autre nouveauté, qui prouve, on ne peut pas mieux, et le malheur de ces tems, et la barbarie des mœurs du siécle: c'est le droit *d'Otage*. [Jus obstagiorum] Rien de plus bizarre que ce droit. Un Souabe, un bourgeois d'Ulm, lésé par un Liegeois, ne se donnoit pas la peine de poursuivre sa partie, devant la justice ordinaire; il se contentoit de mettre la main sur le premier Liegeois qu'il pouvoit rencontrer, et le constituoit prisonnier à Ulm, c'est là qu'il faisoit juger sa cause, et *l'Otage* n'étoit point relâché que la sentence ne fût exécutée. L'histoire et les archives nous fournissent mille exemples de ces procès singuliers: et *Lehmann* rapporte que les citoyens de Spire ont fait déclarer par des lettres patentes, qu'ils n'étoient point sujets de leur Evêque, et que par conséquent l'on ne pouvoit les arrêter légitimement pour les causes que regardoient les sujets de ce prince.

The

The inhabitants of the ſame foreign country happening, at any one time, to reſide in London, were formerly viewed in the ſame light; and any one of them might be proſecuted for the debts contracted by his countrymen. In a treaty between Edward the Second and Alphonſo king of the two Caſtiles, it is agreed, that the merchants of Bilboa, and the other towns of Biſcay, ſhall not for the future be arreſted, nor have their goods diſtrained, for the debts of any Spaniard, for whom they have not become perſonally bound *. The ſmall number of Spaniſh merchants reſiding in London, and the diſtance of their native country, made them appear as much connected as if they had been members of a ſingle rude village or tribe.

This noted regulation concerning the Saxon tythings is therefore to be regarded as the remains of extreme ſimplicity and barbariſm, rather than the effect of uncommon refinement or policy; and in this view, it may be obſerved that, in conſequence of ſome improvement in the manners of the people, the original obligation impoſed upon every tything, to

* Anderson's History of Commerce.

repair the injuries committed by any of its members, was, in a period ſubſequent to that which we are at preſent examining, ſubjected to certain limitations. By a law which has been aſcribed to William the conqueror, but which is probably of an earlier date, we find it enacted, that, if a crime is committed by any member of a decennary, who eſcapes from juſtice, his tythingman, with two others of the ſame tything, together with the reſpective tythingmen, and two others, out of the three neighbouring tythings, ſhall aſſemble to examine the ſtate of the fact, and if the tything to which the criminal belongs is purged by the oath of theſe twelve perſons, it ſhall be freed from the obligation to pay the damage *. The progreſs of government, by enlarging the general intercourſe of ſociety, contributed to diminiſh the peculiar connexion among the inhabitants of the ſame village, and made it appear an intolerable hardſhip, that they ſhould, without diſtinction, be accountable for the miſdeeds of one another.

* See the laws collected by Roger de Hoveden, and said by this author to have been made by William the conqueror in the 4th year of his reign, with the advice of his barons, nobles, wise men, &c.

Beſide

Beſide the two branches of buſineſs which I have mentioned, the defence of the country and the deciſion of law-ſuits, that were canvaſſed in the Saxon tythings, hundreds, and ſhires, thoſe meetings were accuſtomed to deliberate upon matters of ſtill greater importance. They received complaints concerning ſuch abuſes in adminiſtration, or grievances, as had occurred within their ſeveral diſtricts, and by introducing new regulations endeavoured to apply a proper remedy. Thus the heads of families or independent proprietors of every village, or tything, exerciſed a legiſlative power within their own liberties, but were liable to be controuled, in this reſpect, by the meetings of the hundred, which enjoyed the ſame power in a larger territory; and both of theſe were ſubordinate to the meetings of the ſhire, which poſſeſſed a legiſlative authority over all the hundreds of that extenſive diviſion. How the meetings of the ſhire were liable to be controuled by a ſtill greater aſſembly, I ſhall now proceed to inquire.

CHAP. VII.

Of the Wittenagemote.

BY the gradual extenſion of intercourſe between the different families or tribes of the Anglo-Saxons, and by the advancement of their political union, the inhabitants of larger territories were led to aſſemble for the regulation of their public concerns. As the freemen or allodial proprietors of a tything, of a hundred, and of a ſhire, determined the common affairs of their ſeveral diſtricts, and were convened for that purpoſe by the tything-man, the hundreder, and the alderman; ſo the union of people belonging to different ſhires produced a greater aſſembly, conſiſting of all the allodial proprietors of a kingdom, and ſummoned by the king, the great military leader, and chief magiſtrate of the community. This national council received the appellation of the *mickle-mote,* or *Wittenagemote.*

During the continuance of the Heptarchy, each of the Saxon kingdoms had its own Wittenagemote; and there can be no doubt that thoſe

thoſe national councils, though ſometimes they might act in concert, were independent of one another. But when all the dominions of the Anglo-Saxons were reduced under one ſovereign, the Wittenagemotes of each particular kingdom were diſſolved, and there was formed a greater aſſembly of the ſame nature, whoſe authority extended over the whole Engliſh nation. The circumſtances attending this important revolution are loſt in obſcurity; and we have no means of diſcovering with certainty, whether it was produced by the mere influence of cuſtom, or by an expreſs regulation. It is probable that when Egbert had ſubdued the different ſtates of the Heptarchy, the members of every ſeparate Wittenagemote were invited to that great council of the monarchy which was then eſtabliſhed; and that, in conſequence of this, they would ſcarcely think it worth while to continue their attendance in thoſe inferior meetings with which they had formerly been connected.

Of the particular claſs or deſcription of perſons who compoſed the Saxon Wittenagemotes, either in the reſpective kingdoms of the Heptarchy, or in the monarchy which

was

was formed from the union of theſe, the hiſtorians of that period have given us little or no direct information. But, from a variety of circumſtances, it appears highly probable that thoſe ancient aſſemblies were compoſed of all the members of the community who enjoyed landed eſtates in full property; that is, of all thoſe who had the appellation of the *Greater Thanes*.

1. From the ſtate of the country after the Saxon conqueſt, theſe perſons, being independent with reſpect to their poſſeſſions, were maſters of their own conduct, and were under no neceſſity of adopting public meaſures to which they had not conſented, or upon which they had not at leaſt had an opportunity of deliberating and giving their ſuffrage. Without their advice and concurrence, therefore, the king could ſeldom adventure to tranſact any important national buſineſs; and from the frequent practice of conſulting them, they were gradually formed into a regular aſſembly, and became an eſtabliſhed branch of the conſtitution. The reſt of the inhabitants were either *vaſſals*, whoſe benefices, if not held precariouſly, were ſecured to them only for a limited

limited period; or *peaſants*, whoſe condition was yet more dependent and ſervile. That the king ſhould find it neceſſary or expedient to ſummon either of theſe claſſes of people to his great council, cannot eaſily be conceived. Their ſupport and aſſiſtance might be expected, of courſe, in the execution of every meaſure which had been approved by their ſuperiors; and therefore the voice of the allodial proprietors of land might, on every public emergency, be regarded as the voice of the nation.

2. The uſual deſignations given, by ancient authors, to thoſe who ſat in the Saxon Wittenagemote, ſeem perfectly to coincide with this idea of its conſtituent members. The perſons preſent in that aſſembly, when they happen to be particularly ſpecified, are commonly ſaid to be the *biſhops and abbots*, together with the *aldermen*, the *chiefs*, the *nobles*, or the leading men of the kingdom *. Theſe expreſſions are peculiarly applicable to the allodial proprietors of land. It is to be obſerved, that in

Principes, optimates, magnates, proceres, &c. See Spelman on Parliaments—Dr. Brady, Answer to Petyt—and the series of great councils before the conquest. Tyrrell's Bibliotheca Politica, Dial. 6.

thoſe

thoſe times there was no ſuch perſonal wealth as could create any authority; neither was there any diſtinction between what is now called a nobleman and a gentleman; but every individual, poſſeſſed of landed property, was a ſort of leader, and maintained a degree of influence and rank correſponding to his fortune. The dignified clergy were diſtinguiſhed by their profeſſion, as the aldermen, or governors of ſhires, were by their office; for which reaſon, in ſpeaking of the perſons who compoſed the Wittenagemote, thoſe two claſſes of men are frequently mentioned in particular, while the other proprietors of land are only pointed out by a general appellation expreſſive of their condition.

3. The ſame concluſion receives an additional ſupport from the obvious analogy between the Wittenagemote, and the inferior meetings of the tythings, hundreds, and ſhires. Theſe inferior meetings were plainly of the ſame nature with the great national council. The former deliberated upon the public affairs of the ſeveral diſtricts to which they belonged: the latter, upon the public affairs of the whole nation. Both of theſe appear to have ariſen from

from the ſame circumſtances; and probably the one was introduced in imitation of the other. It was becauſe the chief magiſtrate of every inferior diſtrict had not, of himſelf, ſufficient authority to execute public meaſures, that he was accuſtomed to call meetings of thoſe inhabitants whoſe concurrence he thought was expedient; and it was upon the ſame account that the king was accuſtomed to aſſemble the great national council. There is great reaſon to believe, therefore, that all theſe meetings were conſtituted in the ſame manner; and, as it ſeems to be univerſally agreed, that the court of every tything, hundred, and ſhire, was compoſed of the reſpective proprietors of land in thoſe diſtricts; it can hardly be doubted that the conſtituent members of the Wittenagemote were the people of a ſimilar deſcription throughout the whole kingdom.

Laſtly; The probability of this opinion is farther increaſed, when we examine the ſtate of the national councils, which exiſted about the ſame time in the other European kingdoms. In all thoſe kingdoms, the ſovereign was under the neceſſity of tranſacting the more important

important parts of the public buſineſs with the concurrence of a great proportion of his ſubjects; and the councils which he convened for this purpoſe appear, in every country, to have been compoſed of that part of the people who enjoyed a degree of influence over the reſt of the community. Thus in France, the country of modern Europe in which the greateſt number of particulars concerning the primitive government has been tranſmitted to us, the ſupreme concerns of the kingdom fell under the deliberations of the aſſemblies of the *field of march*; ſo called from the time of their principal meetings. From the accounts delivered by ſome of the French writers, theſe councils appear to have been compoſed of all the free men of the nation. According to others, they conſiſted of the leading men or nobility*. Theſe accounts are, at bottom, not very different. In the early periods of the French monarchy, no perſon could be denominated free, unleſs he had the independent

* See Observations ſur l'Hist. de France par M. l'Abbé Mably—and Memoires Historiques du Gouvernement de France, par M. le Compte de Boulainvilliers.

property

property of land; and every landed proprietor was, in reality, a ſort of chief or nobleman*.

In conſequence of the diſputes between the king and the people, that took place in England after the acceſſion of the houſe of Stewart, there aroſe two political parties; the followers of which have maintained very oppoſite opinions concerning the conſtituent members of the Anglo-Saxon Wittenagemote. The ſupporters of the prerogative, in order to ſhew that the primitive government of England was an abſolute monarchy, and that the privileges enjoyed by the people have all flowed from the voluntary grants and conceſſions of the ſovereign, were led to aſſert that the original members of the Wittenagemote were perſons under the king's immediate influence and direction; from which it was concluded, that, ſo far from being intended to controul the exerciſe of his power, this council was called of his own free

Hinc haud ægre colligere est, unde nostri appellarent parliamenta procerum totius regni conventus.—Du Cange v. Parliamentum. The Salic laws are said to have been made with the consent of the *proceres* or the *optimates*.—And even charters from the crown usually bear, that they were granted *cum consensu fidelium nostrum*,—or *in nostra et procerum presentia*. Mably, ibid.

choice,

choice, for the purpoſe merely of giving advice, and might of conſequence be laid aſide at pleaſure. Hence it was contended, that beſide the biſhops and abbots, and the aldermen, both of which were ſuppoſed to be in the nomination of the crown, the other members of the Wittenagemote, who received the appellation of *wites* or *wiſe men*, were the lawyers or judges of the kingdom, who ſat in the privy council, and were likewiſe in the appointment of the ſovereign*.

Thoſe writers, on the contrary, who defended the rights of the people, appear, from their eagerneſs in combating this opinion, to have been betrayed into the oppoſite extreme. In their endeavours to prove the independent authority of the ancient national council, they were induced to believe, that, from the beginning, it had been modelled upon the ſame plan as at preſent; and that it was originally compoſed of the nobility, the knights of ſhires, and the repreſentatives of boroughs†.

* Hume's Hiſt. of England, Appendix to Anglo-Saxon period.

† Sir Robert Atkyns' Power, Juriſdiction, and Privileges of Parliament,—Petyt, Rights of the Commons aſſerted.

It requires no great ſagacity or attention, at this day, to diſcover that both of theſe opinions are equally without foundation. They may be regarded as the deluſions of prepoſſeſſion and prejudice, propagated by political zeal, and nouriſhed with the fondneſs and credulity of party attachment. Nothing can be more improbable, or even ridiculous, than to ſuppoſe that the lawyers or judges of England were, immediately after the ſettlement of the Anglo-Saxons, a body of men ſo conſiderable as to compoſe the principal part of the Witenagemote, and, from a title peculiar to themſelves, to fix the general denomination of that great aſſembly. In a very rude age, the buſineſs of pleading cauſes is never the object of a ſeparate profeſſion; and the deciding of lawſuits does not form a characteriſtical diſtinction in the chiefs or leading men, who are occaſionally employed in that manner. We may as well ſuppoſe that, in the period of Engliſh hiſtory now under conſideration, the Anglo-Saxon *wites*, or *wiſemen*, were the phyſicians,

serted.—Jani Anglorum facies nova.—Argumentum Antinormanicum.—Tyrrel's Bibliotheca Politica.—Lyttelton's Hist.

the ſurgeons, and apothecaries, or the mathematicians, the chymiſts, and aſtronomers of the country, as that they were the retainers of the law. We have ſurely no reaſon to believe that the latter were, by their employment, more diſtinguiſhed from the reſt of the community than the former.

Beſides, if the *wites* are underſtood to be judges and lawyers, it will follow, that the ancient national aſſembly was often compoſed of that claſs of men excluſive of all others; for, in ancient records, it is frequently ſaid, that laws were made, or public buſineſs was tranſacted, in a council of *all the wites* of the kingdom. But it is univerſally admitted, that the biſhops and abbots, as well as the aldermen or governors of ſhires, were members of the Wittenagemote; from which it is a natural inference, that theſe two ſets of people were comprehended under the general appellation of *wites*.

This may eaſily be explained. The term *wite* ſignifies, primarily, a man of valour, or military proweſs; and hence a man of high rank, a nobleman It has been uſed, in a

Somner's Sax. Dict. v. *Wita*.

ſecondary

ſecondary ſenſe, to denote a *wiſe man*, from the uſual connection, eſpecially in a rude age, between military ſkill and experience or knowledge: in the ſame manner as *an old man*, or *grey-headed man*, is, according to the idiom of many languages, employed to ſignify a ruler or governor. As far as any concluſion, therefore, can be drawn from the appellation of Wittenagemote, or council of the wites, it is likely that this national aſſembly comprehended neither judges nor lawyers, conſidered in that capacity, but that it was compoſed of all the leading men, or proprietors of landed eſtates; in which number the dignified clergy, and the governors of ſhires, if not particularly diſtinguiſhed, were always underſtood to be included *.

The other opinion is not more conſiſtent with the ſtate of the country, and the condition of its inhabitants. It ſuppoſes that in England, ſoon after the ſettlement of the Anglo-Saxons, the lower ranks of men were ſo

* By a law of king Ina, it is enacted, that if any perſon fought in the houſe of an alderman, *or of any illuſtrious wite*, he ſhould pay a fine of ſixty ſhillings. See Wilkin's Anglo-Saxonica, Leges Inæ, c. 6.

independent of their ſuperiors, as to form a ſeparate branch of the community, inveſted with extenſive political privileges. This opinion ſuppoſes, in particular, that the mercantile part of the inhabitants were become a diſtinct order of the people, and had riſen to ſuch opulence and authority as entitled them to claim a ſhare in the conduct of national meaſures. There is not, however, the leaſt ſhadow of probability in this ſuppoſition. Whatever improvements in trade and manufactures had been made in Britain, while it remained under the provincial government of Rome, theſe were almoſt entirely deſtroyed, by the convulſions which attended the Saxon conqueſt, and the ſubjection of a great part of the iſland to the dominion of a barbarous people. The arts which remained in the country after this great revolution, were reduced to ſuch as procure the mere neceſſaries, or a few of the more ſimple conveniencies of life; and theſe arts were hardly the objects of a ſeparate profeſſion, but were practiſed occaſionally by the inferior and ſervile part of the inhabitants. How is it poſſible to conceive, in ſuch a ſtate of manufactures, that the trading intereſt would

would be enabled to aſſume the privilege of ſending repreſentatives to the great council of the nation? Even in thoſe European ſtates, whoſe advancement in arts was much earlier than that of the Anglo-Saxons, the formation of the trading towns into corporations was long poſterior to the period we are now examining; yet this event muſt have preceded their acting in a political capacity, and, conſequently, their being repreſented in the national aſſembly.

But, independent of this conſideration, which can hardly fail to produce conviction in ſuch as are well acquainted with the early hiſtory of modern Europe; the fact in queſtion may be determined in a manner ſtill more deciſive and ſatisfactory. If the repreſentatives of boroughs, and the knights of ſhires, were conſtituent members of the ancient Wittenagemote, it is inconceivable that no traces of their exiſtence ſhould have been preſerved in the annals of the Saxon princes. From the numerous meetings of that aſſembly, which are mentioned in many authentic records, and of which accounts are given by hiſtorians, who lived either in that period, or not long after it, a variety of expreſſions muſt have occurred, by

which the fact might be fully aſcertained. Had it been a common practice for the towns and ſhires to chooſe repreſentatives in the national aſſembly, is it poſſible to believe that this practice would never once have been alluded to upon any occaſion whatever; or that, when mention is made ſo frequently, of the biſhops and other dignified clergy, of the aldermen, of the wites, or leading men, who ſat in this meeting, another part of its members, conſiſting of a claſs of people totally different from the former, would in no caſe, either from accident or deſign, have been pointed out in clear and unequivocal terms? It cannot be diſputed; however, that, notwithſtanding the moſt diligent ſearch into our ancient hiſtories and records, by men of great induſtry and learning, and eager to prove their hypotheſis, not a ſingle unambiguous expreſſion, to that effect, has ever been found: and this obſervation is not limited to the time of the Heptarchy, but may be extended from the ſettlement of the Anglo-Saxons to the Norman conqueſt.

The attempts to prove that there were repreſentatives of boroughs and ſhires in the Wittenagemote conſiſt, for the moſt part, in giving

giving a forced interpretation to certain vague and general phraſes, which happen to be employed by ancient authors, concerning the members of that aſſembly. The word *alderman*, for example, denoting a *ruler*, may be extended to the ruler, or chief magiſtrate, of a town, as well as of a ſhire; and therefore it is contended, that when the aldermen are mentioned in old records, as a conſtituent part of the national council, we are to underſtand the repreſentatives of boroughs, as well as the governors of ſhires. It is, in like manner, aſſerted that, by chiefs, or leading men, and by wites, or wiſe men, the perſons choſen to repreſent the commons are as properly deſcribed, as the nobility, or proprietors of land *.

According to this reaſoning, the repreſentatives of the commons, in every ſhape, and of every deſcription, as they exiſt at preſent, though not ſeparately mentioned, are included in almoſt every deſignation, applied to the ancient members of the Wittenagemote. How

* Tyrrell's Bibliotheca Politica, Dial. 6.—It ſeems to be the opinion of this author, however, that the exiſtence of the knights of ſhires, in the Saxon Wittenagemote, is more doubtful than that of the repreſentatives of boroughs.

far this mode of argument may be extended it is difficult to ſay. The *aldermen* and the *wites* have, each of them, the capacity of lord Peter's *bread*, containing the quinteſſence of beef, mutton, veal, veniſon, partridge, plum-pudding, and cuſtard.

In the accounts given by ancient authors of thoſe that were called to the national council, mention is made, in ſome caſes, not only of the biſhops, abbots, aldermen, and chiefs, but alſo of the *people*; and the perſons preſent are ſometimes diſtinguiſhed by the appellation of *a great multitude* *.

* Thus in the record of a Wittenagemote held by Ethelbert in 605, it is said, "*Convocato igitur communi concilio tam "cleri quam populi.*"

A general council is said to have been held by Ethelwolf, in 855, *Præsentibus et subscribentibus Archiepiscopis et Episcopis Angliæ universis, nec non Beorredo rege Merciæ, Edmundo East-Anglorum rege, Abbatum et Abbatissarum, Ducum, Comitum, Procerumque totius terræ, aliorumque fidelium infinita multitudine, qui omnes regium chirographum laudaverunt, dignitates vero sua nomina subscripserunt.*

Canute, in the fifth year of his reign, is said to have held a great council, of his archbishops, dukes, earls, abbots, *cum quamplurimus gregariis militibus, ac cum populi multitudine copiosa.*

In some other instances, expressions of a similar nature occur; such as *vulgi consensus*, and *populo audiente et vidente.*

[See

But it cannot eſcape obſervation, that if this proves any thing, it will prove too much: it will prove that all the inhabitants, even thoſe of the loweſt rank, inſtead of ſending repreſentatives, were perſonally allowed to vote in the national council. By the appellation of *the people* it appears that, on ſome occaſions, the lay-nobles are underſtood, in oppoſition to the dignified clergy; and on others, the ordinary proprietors of land, in oppoſition to thoſe of diſtinguiſhed opulence. There is, at the ſame time, good reaſon to believe, that the multitude, ſaid to have been preſent at ſome of thoſe meetings, was partly compoſed of mere ſpectators, who might poſſibly, by their acclamations, teſtify their approbation of the meaſures propoſed.

[See the authors above quoted—as also Gurdon's History of the Parliament.] In many of these expressions a distinction is clearly pointed out between the members of the meeting and the inferior people that were merely spectators. It ought also to be remembered, that the greatest number of those general phrases, quoted for proving that the commons were represented in the Wittenagemote, are used only by writers after the Norman conquest; who, in translating Saxon laws, or in speaking of Saxon usages, may be supposed to accommodate their language to the ideas prevalent in their own times.

There

There is produced an inſtance of a Wittenagemote, held by one of the kings of Mercia, in the year 811, in which a royal charter is ſaid to have been ſigned before "the Mercian "chiefs, biſhops, leaders, aldermen, *procurators*, "and relations of the ſovereign, together with "Cuthred the king of Kent, and Suthred the "king of the Eaſt Saxons, and all thoſe who "were preſent in the national council *." As the members of the Wittenagemote had immemorially the privilege of appointing any perſon to act for them in their abſence, it has been ſuppoſed, with great probability, that the *procurators* here mentioned were the proxies of abſent nobles. In ſupport of this conjecture, it is obſerved, that they are placed next in order to the nobles, and immediately before the king's relations †.

* *Merciorum Optimates, Episcopos, Principes, Comites,* PROCURATORES, *meosque propinquos, nec non Cuthredum regem Cantuariorum, atque Suthredum regem Orient. Saxon. cum omnibus qui testes nostris synodalibus conciliabulis aderant.* [Annals of Winchelcomb.]

† Gurdon's History of the Parliament.—In a charter of Athelstan, the *procurators* are also mentioned. But this charter was not granted in the Wittenagemote. [Ibid.]

But

But although there is no ground for believing that the repreſentatives of the commons were ever admitted into the Wittenagemote, there can be as little room to doubt that, when the different Anglo-Saxon kingdoms were firſt united under one monarch, it compoſed a very numerous aſſembly. As, upon the ſettlement of the Saxons in Britain, few perſons were in a condition to occupy large eſtates, the number of allodial proprietors was proportionably increaſed. It is probable that the eſtates of the greater part of individuals extended to no more than a *hide* of land, or what could be cultivated by a ſingle plough, and that this property conſtituted the primitive qualification for voting in the ſeveral Wittenagemotes of the Heptarchy. We hear of no particular limitation in this reſpect, either in the reign of Egbert, or in any preceding period.

It has been imagined by ſome authors, that the privilege of ſitting in the Wittenagemote was originally confined to ſuch as poſſeſſed forty hides of land; a property of great extent, which few individuals, it is natural to ſuppoſe, could have an opportunity of acquiring; whence it ſeems to be inferred, that a ſmall part only of

of the landed gentry were admitted into the councils of the ſovereign *. This opinion is founded upon a paſſage in the regiſter of Ely, which mentions a diſtinction in point of rank, enjoyed by ſuch of the nobles as poſſeſſed eſtates amounting to forty hides of land. But this paſſage refers to the ſtate of the kingdom in the reign of Edward the confeſſor, when property had been ſubjected to the moſt important revolutions, and government had widely deviated from its original inſtitution. No inference can thence be drawn, concerning the primitive conſtitution of the national council; which muſt have ariſen from the ſtate of the inhabitants at the time when it was framed. How far the authority above mentioned is ſufficient to juſtify that concluſion, with reſpect to the later periods of the Anglo-Saxon government, will fall to be afterwards examined. It is therefore highly probable that the Wittenagemote of the Anglo-Saxons was originally ſo conſtituted, as to admit a great proportion of the people into a ſhare of its

* Dugdale's preface to his Baronage. Hume's Hiſt. of England, appendix to Anglo-Saxon period.

deliberations;

deliberations; and it merits attention, that even ſuch of the inhabitants as were excluded from this aſſembly, were either the ſlaves, or the tenants and vaſſals of thoſe who ſat in it. The former were thus placed under the protection of the latter. Men of inferior rank, though not formally repreſented in the national council, enjoyed, therefore, a degree of ſecurity from the influence of their maſter or ſuperior, who had an intereſt to defend them from every injuſtice but his own, and whoſe jealouſy was ever watchful to guard them from any oppreſſion of the ſovereign.

The *powers* exerciſed by the Saxon Wittenagemote were ſuch as might be expected from the independent ſituation, and the opulence of its members. It poſſeſſed a ſimilar authority over the whole kingdom, to that of any tything, hundred, or ſhire, over its own ſubordinate diviſion. In general, the Wittenagemote ſeems to have taken under its cognizance all thoſe branches of government, which were of ſufficient importance to merit its attention, and which, at the ſame time, could be directed, in conſiſtency with the de-

lays

lays ariſing from the deliberations of a numerous aſſembly.

1. It exerciſed, firſt of all, the power of providing for the defence of the kingdom, and of determining the public military operations*. This was, in all probability, the primary object in calling that aſſembly; and for which, according to the moſt ancient cuſtom, it was regularly held twice in the year; in the ſpring when the ſeed-time was over, to reſolve upon ſuch expeditions as were thought expedient; and, in the autumn, before the harveſt began, to divide the plunder. A people ſo rude as the early Saxons had little other buſineſs of importance but what conſiſted in the ſowing and reaping of their grain; and were generally diſpoſed to employ the greateſt part of the ſummer, either in private rapine, or in hoſtilities againſt a foreign enemy. In the other kingdoms of Europe, the ſame ſeaſons were obſerved for the meetings of the national council. We are informed that, in France, the vernal meetings were originally in the be-

* Selden's Notes on Gov. of England, collected by Nath. Bacon, part i. chap. 20. and the authorities referred to.

ginning

ginning of March; but that afterwards, from greater attention, it ſhould ſeem, to the cares of huſbandry, they were delayed till the firſt of May*.

It may here be worth while to remark, that the power of declaring peace and war, which belonged indiſputably to the Saxon Wittenagemote, affords complete evidence that its members were allodial proprietors of land; for, upon the ſuppoſition of their being the vaſſals of the crown, they muſt have been bound, when called upon, to attend the ſovereign in war, and conſequently their conſent would not have been requiſite in undertaking any military enterprize.

The ſame authority, by which military enterprizes were determined, made likewiſe a proviſion for carrying them into execution. As from the circumſtances of a rude nation, every man was in a condition to furniſh a number of ſoldiers proportioned to the extent of his property; it was a general law in the Saxon government, that the proprietors of land ſhould be rated, for military ſervice, ac-

* This change is said to have been made about the beginning of the second race of the French kings.

cording

cording to the number of *hides* which they poſſeſſed; and if any perſon refuſed to contribute his proportion, he was liable to forfeit his poſſeſſions, and to be deprived of the public protection.

The erecting and repairing forts and caſtles, as a defence againſt the ſudden incurſions of an enemy, and the maintaining a free communication, by roads and bridges, between the different parts of the kingdom, were objects of police which, in the ſame view, attracted the notice of the Wittenagemote, and for which individuals were aſſeſſed in proportion to their wealth. The magnificent works of this nature, which were executed by the Romans, in all the provinces of their empire, contributed much to facilitate the progreſs of their arms, and to eſtabliſh their dominion over the conquered people. From their example, it is likely that the Saxons, in Britain, as well as the other nations, who ſettled upon the continent of Europe, were incited to improvements of this nature which they would not otherwiſe have thought of.

2. When the members of the Wittenagemote had been aſſembled, and when they had ſettled

ſettled every point relating to their martial operations, their attention was frequently turned to other objects of national concern. Whatever inconveniencies had been felt from the manner of conducting public buſineſs, whatever abuſes had been committed in the adminiſtration of government; theſe were canvaſſed; and regulations were made for preventing the like evils for the future. It is not diſputed that the Wittenagemote exerciſed a legiſlative power over the whole kingdom; and, of conſequence, the power of repealing and altering the regulations introduced by the meetings of any particular tything, hundred or ſhire*. The impoſition of taxes, the moſt important appendage of legiſlation, was likewiſe undoubtedly aſſumed by this great aſſembly, ſo far as taxes exiſted in that early period; but theſe were in a great meaſure unknown; the ordinary expence of government being defrayed out of the private eſtate of the king, and from the various emoluments annexed to the regal dignity.

* See the preface to most of the collections of Saxon laws published by Wilkins.

3. To this legiſlative power was added that of directing and controlling the exerciſe of the royal prerogative. Thus the demeſnes of the crown were conſidered as not entirely the private eſtate of the king; but as in ſome meaſure the property of the public, which fell to be managed and diſpoſed of under the public inſpection. The alienation, therefore, of crown-lands, though proceeding in the name of the king, was not effectual without the concurrence of the *wites*; and hence royal charters were frequently granted in the Wittenagemote, and ſubſcribed by a number of its members*.

The coining of money, in order to ſave the trouble of weighing and aſſaying the metals which paſs in exchange, was a privilege early aſſumed by the king in the reſpective kingdoms of Europe; and even by the nobles or great proprietors of land in the territories under their juriſdiction. In the exerciſe of this privilege, great frauds had been committed on

* Of this privilege of the Wittenagemote there occurs a remarkable inſtance in the reign of Egbert, in 836. Spelm. concil. t. i. p. 340.

many

many occaſions, by debaſing the coin below its uſual ſtandard; for preventing which abuſes, the Wittenagemote, in England, appears to have ſuperintended the behaviour both of the king and of the nobles, and to have regulated the coinage throughout the whole kingdom*.

The members of this great council had no leſs authority in the government of the church than in that of the ſtate. That they were early accuſtomed to take cognizance of the eſtabliſhed religion, appears from what is related of Edwin king of Northumberland, who being ſolicited to embrace Chriſtianity, is ſaid to have anſwered, that in a matter of ſuch importance he would be determined by the advice of his wites and princes. In the Wittenagemote, all eccleſiaſtical laws were made; the king's nomination of biſhops and other dignified clergy was confirmed; and their number, as well as the extent of their livings, was regulated.

The ſame national council gave ſanction to the eſtabliſhment of monaſteries, and of the revenues with which they were endowed†.

* Wilkins leges Athelstani.

† Selden's Notes collected by N. Bacon. part 1. ch. 20. and the authorities to which this author refers.

Not contented with directing the exercise of the executive power, the nobles and wites assumed, in extraordinary cases, the privilege of calling the sovereign to account for the abuses of his administration. Of this a remarkable instance occurs in the reign of Segebert, a king of the western Saxons; who, for his tyrannical behaviour, and after he had treated with contempt the remonstrances of his people, was, by a general assembly of the nation, expelled the kingdom; and another prince of the royal blood was elected in his place. This event is said to have happened in the year 755*.

Lastly, when the members of the Wittenagemote had met to deliberate upon public business, they were accustomed also to hear complaints concerning such great quarrels and acts of injustice, as could not be effectually redressed by inferior judicatories, and to endeavour, by their superior authority, either to reconcile the parties, or to decide their differences. By frequent interpositions of this nature, that great council was at length formed into a regular court of justice; and became

* Saxon chronicle.

the

the ſupreme tribunal of the kingdom; in which appeals from the courts of each particular ſhire, as well as original actions between the inhabitants of different ſhires, were finally determined.

CHAP. VIII.

State of the Sovereign in the primitive Anglo-Saxon Government.

THE different parties of the Saxons, who invaded Britain, were each of them under the conduct of ſome adventurer, whoſe fortunes they had followed, either from perſonal attachment, or from a confidence in his abilities. After they had ſettled in the country, the ſame perſon continued to have the command of their forces, and became alſo the chief civil officer of the community. The longer he had remained in that high ſtation, his poſſeſſion of it was rendered more ſecure by the continuance of the ſame circumſtances which had originally produced his elevation. His military talents, deriving luſtre and importance from the diſtinguiſhed point of view in which they were beheld, excited the admiration and reſpect of his followers; while the dangers with which they were ſurrounded, and a ſenſe of their common intereſt, united them

them in fighting under his banner. By every new expedition they became the more accuſtomed to ſubmit to his direction; and the oftener they had found it neceſſary to ſolicit his protection and aſſiſtance, under thoſe calamities to which they were expoſed, they felt more ſenſibly the advantages derived from his favour, as well as the inconveniences ariſing from his diſpleaſure.

In the early hiſtory of the Anglo-Saxons, the leader of every ſeparate tribe or party, is accordingly repreſented as poſſeſſing a permanent office, with the title of *herotoch* or duke, in place of which that of *king* was afterwards aſſumed.

The king was in poſſeſſion of a landed eſtate, acquired in the ſame manner with that of every inferior leader, by whoſe aſſiſtance the conqueſt had been made. As the booty ariſing from any ſucceſsful enterprize, was divided among the free people or heads of families concerned in the adventure, and, as on thoſe occaſions, each individual obtained a portion, both of land and moveables, ſuited to his rank and abilities; it may eaſily be conceived that the property accumulated, in a

courſe of time, by the ſovereign, would be much greater than that of any one of his ſubjects. His eſtate was naturally diſtributed among his dependents, according to the ſame plan which was adopted by every other landed proprietor. A part of it was beſtowed upon his kindred or free retainers, under the condition of military ſervice; and the remainder was cultivated by his villains, or bondmen, for ſupporting the expence of his houſhold. Over theſe two claſſes of people, he exerciſed the rights of a ſuperior, and of a maſter. Throughout the reſt of the kingdom, excluſive of his own particular eſtate, his authority was much more limited. Every allodial proprietor, unaccuſtomed to ſubjection, and ſupported by his own retainers, was more or leſs in a condition to maintain his independence; and thoſe who had acquired conſiderable property, beholding with jealouſy the ſuperior dignity and pretenſions of the king, were commonly ready to combine againſt him, either in reſenting or oppoſing, whatever they deemed an infringement of their liberties.

The powers with which the ſovereign came to be inveſted, either in the different ſtates of the

the Heptarchy, or in the ſubſequent monarchy which aroſe from the union of thoſe kingdoms, were ſuch as, in order to prevent confuſion and promote the diſpatch of public buſineſs, were tacitly devolved upon him, or as, from the nature of his ſituation, he had found encouragement to aſſume, and had, without oppoſition, been permitted to exerciſe. The dignity and office of the king, though higher in degree, were perfectly ſimilar to thoſe of the tythingman, the hundreder, and the earl; and he poſſeſſed nearly the ſame powers over the whole kingdom, which thoſe inferior officers enjoyed in their own particular diſtricts.

1. By having the command of the forces in the time of battle, the original ſource of his greatneſs, he was led to direct their movements on other occaſions; to take preparatory ſteps for bringing them into the field; to ſuggeſt particular enterprizes, to plan the meaſures for conducting them, to execute treaties with foreign ſtates, and in general to ſuperintend the defence of the kingdom, and the whole courſe of its military operations.

2. In conſequence of his being at the head of the military department, the king was led alſo

alſo to exert his authority in ſuppreſſing internal diſorders, in quelling tumults and inſurrections, in reſtraining private rapine and violence, in ſeizing offenders, and preventing their eſcape from juſtice; in a word, he obtained the province of maintaining the ordinary police of the country, and the ſecurity of its inhabitants.

3. As, from theſe two branches of power, he became the prime mover, and propoſer of public meaſures, and as, in matters of great moment, the concurrence of the Wittenagemote was neceſſary; he acquired, of courſe, the excluſive privilege of calling that aſſembly, and of preſiding in all its deliberations. The influence which he thence obtained, with regard to its determinations, may eaſily be imagined. The preſident of every numerous aſſembly has many opportunities of moulding the buſineſs that comes before it, into ſuch a ſhape as will promote his own deſigns; more eſpecially, if by the permanent enjoyment of that office, he has leiſure to form a regular plan of management; and if, by having a diſcretionary power of calling the particular meetings, he may regulate his motions according as the

the aſſembly happens, in different conjunctures, to be attended by different members. But while, by theſe favourable circumſtances, the ſovereign was capable of advancing his political intereſt, he enjoyed the additional advantage of ſuperior opulence and dignity; which put him in a condition to intimidate, as well as to over-reach oppoſition. To a prince, therefore, poſſeſſed of much prudence, and of popular talents, it was not difficult, in ordinary caſes, to procure the conſent of the Wittenagemote to thoſe meaſures which he thought proper to ſuggeſt; and the reſolutions of that aſſembly, while they appeared to limit and controul the power of the crown, were at bottom, very often directed by the monarch, and rendered ſubſervient to his will.

4. As the Wittenagemote enacted laws, diſtributed juſtice in the laſt reſort, and regulated the adminiſtration of public affairs; ſo the duty of enforcing the decrees and regulations of that aſſembly, and, in general, the executive part of the government, were naturally devolved upon the king. That great officer, who conducted the military force of the kingdom, could hardly fail to aſſume the province of cauſing

cauſing the puniſhments decreed againſt offenders to be regularly inflicted, and of compelling every individual to fulfil the deciſions of the law. The ſame perſon was led to procure information with reſpect to the commiſſion of heinous crimes, and to direct that they ſhould be proſecuted before the proper tribunals. In theſe employments, the ſovereign acted as the head and repreſentative of the community. In the ſame capacity, he obtained the nomination of many inferior officers in church and ſtate; the privilege of coining money, and of ſuperintending weights and meaſures; together with the exerciſe of all thoſe powers which, from their nature, could not be conveniently devolved upon a popular aſſembly.

Theſe prerogatives, which, from the natural courſe of things, and probably without any formal or expreſs regulation, were gradually annexed to the crown, became the ſource of ſuch perquiſites and emoluments, as more than compenſated the trouble with which they were attended. The chief executive officer, who proſecuted a crime in the name of the public, had a plauſible pretence, upon the ſame account,

account, for levying the fine or forfeiture ariſing from the conviction of the criminal. Beſides, in government, as well as in religion, the bulk of men are commonly ſo engroſſed by the image or picture, as to forget the original, and to beſtow upon the repreſentative the ſentiments due to the object it repreſents. Thus the ſovereign, who appeared to direct, and put in motion, all the wheels and ſprings of government, who enforced the laws, who vindicated offences, and took upon himſelf the whole burden of providing for the public ſafety, was apt to be conſidered as exerciſing, in his own right, thoſe powers with which the community had inveſted him. Thoſe laws which he enforced were conceived to be more immediately calculated for his own benefit: thoſe officers whom he appointed were looked upon as the ſervants of the crown; and thoſe crimes, which he proſecuted and puniſhed, were regarded as crimes committed againſt him in particular, for which he was, therefore, entitled, of himſelf, to demand reparation.

The public revenue of the Anglo-Saxons, therefore, by which the rank of the ſovereign was maintained, and out of which the various expences

expences of government were defrayed, conſiſted almoſt entirely of two branches; the original demeſnes of the king, acquired in the ſame manner with the private eſtate of each allodial proprietor; and the various forfeitures and fines, whether of land or moveables, which, from time to time accrued, or were tranſmitted to him, as the head of the community. From this latter ſource he derived a continual accumulation of wealth. The diſorder and violence, that prevailed ſo univerſally, gave occaſion to the forfeiture of many rich individuals; and the king was commonly diſpoſed to neglect no opportunity of ſeizing and improving ſuch favourable conjunctures. In the greater part of crimes, as it frequently happens in the infancy of government, the criminal was not puniſhed in a manner adequate to the purpoſes of public juſtice, but was admitted to atone for his offence, by making a pecuniary compoſition with the ſufferer. In thoſe caſes, the king exacted a compoſition as well as the private party; and the profits ariſing to the crown, from the innumerable fines and amerciaments, to which this gave occaſion, were one great cauſe of the long

long continuance of that imperfect mode of puniſhing offences.

In this early ſtage of the conſtitution, the revenue above mentioned was ſufficient for all the charges of public adminiſtration; which were then inconſiderable. There was no mercenary army to be paid by the king. The judges were either willing to determine differences among individuals, and to take cognizance of crimes, without any conſideration for their trouble; or they obtained a compenſation by exacting fees from the parties who came before them. Taxes therefore were almoſt entirely unknown. Their introduction belongs to the hiſtory of a more advanced period of ſociety.

But even this primitive revenue of the crown appears to have laid a foundation for the Wittenagemote to interfere in the diſpoſal of it; ſince the eſtate, acquired by the king, in the character of the chief executive officer, and as repreſenting the community, was, in a proper ſenſe, the eſtate of the public. This concluſion was not, indeed, applicable to the whole, though it undoubtedly was to a conſiderable part of the royal demeſnes. But it was not the

the genius of that age to make nice diſtinctions; and the interpoſition of the national council, in the management of ſome branches of the crown revenue, might eaſily be extended to others that were placed in different circumſtances.

We find that, not only in England, but in the other ſtates upon the continent of Europe, the arrangements which took place in the management of the king's houſehold, and private eſtate, had neceſſarily great influence upon the government of the kingdom. According as the ſovereign advanced in opulence and dignity, he was led to employ a greater number of ſervants in the ſeveral branches of his domeſtic œconomy; and the ſame perſons, who enjoyed the chief confidence of their maſter in that private capacity, became, in courſe of time, his miniſters in conducting the buſineſs of the nation. In all the European feudal kingdoms, the management of the king's houſehold was anciently divided into five principal departments, and fell under the inſpection of ſo many great officers.

1. The firſt of theſe was the *ſteward*, or maſter of the houſehold, called, upon the continent,

continent, the *major domo*, the *mayor of the palace*, or *ſeneſchall*; who had originally the care of the king's table. Upon him was naturally devolved the buſineſs of gathering in the rents of the crown lands: for, as thoſe rents were all payable in kind, and were intended for immediate conſumption, it was moſt convenient, that they ſhould be delivered into the hands of that perſon by whom they were afterwards to be laid out for the ſupport of the king's family.

We may eaſily believe that, from the nature of his office, the maſter of the houſhold was in a condition to acquire much influence over all the tenants and vaſſals of the crown. He was the perſon with whom they were obliged to ſettle their accounts; and who, from his minute acquaintance with their circumſtances, was the moſt capable of giving his maſter information concerning them. He was, therefore, the perſon moſt likely to be employed in adjuſting their differences with one another; and in conſequence of his being the deputy judge upon the royal demeſne, he came, at a ſubſequent period, to be intruſted

by the crown, with a ſimilar power over the whole kingdom

2. As the collection and management of the victuals, with which the king's table was ſupplied, fell under the direction of the ſteward; ſo the care of the liquors was committed to a ſeparate officer, the *cup-bearer*, or *butler*. In all the Gothic nations, perſons of wealth and diſtinction lived in great ſplendor, and were much addicted to drinking; for which reaſon, it is not ſurpriſing that the accommodation of the ſovereign, in this reſpect, was

* Spelman, v. major domo. This author ſupposes three different orders of *major domo* in the houſhold of the Gothic monarchs. The firſt, who had the care of the king's table: the ſecond, who preſided over the whole houſhold: and the third, who was employed under the king as chief executive officer of the kingdom. It ſeems evident, however, that theſe officers were originally derived from one, who, as he became great, appointed deputies to diſcharge the inferior branches of duty incumbent upon him.

In England the ſteward, in the king's houſhold, is mentioned under the name of *Oeconomus* as early as the year 749. [See diſcourſe on this office by Mr. Thynn in Hearne's Coll. of Antiquities.] But he does not ſeem to have acquired great power, as a minister of the crown, till the Norman conqueſt. [See ſame collection.]

exalted

exalted into a ſeparate employment, and became an object of ſuitable importance.

3. The care of the chambers was committed to a third officer, the *chamberlain*; whoſe buſineſs it was to ſuperintend the *lodging* of his maſter's family. As this officer was entruſted with whatever required to be locked up in the houſe, for the future ſervice of the houſhold, he ſeems, upon this account, to have become the keeper of the wardrobe, and, at a ſubſequent period, when the crown rents were paid in money, the king's treaſurer or ſuperintendant of the finances*.

4. Another of the king's principal ſervants obtained the inſpection of the ſtable, and was denominated the *comes ſtabuli*, or *conſtable*. When, by the keeping of many horſes, this department was rendered extenſive, it appears to have been divided into two branches; the one belonging to the chief groom, or conſtable; and the other to the *mareſchal*, or ſmith. It is difficult to mark the period when this divi-

* It is probable that the butler [pincerna] was, for a long time, not separated from the steward; and in the early history of England neither he nor the chamberlain seem to have been much distinguished.

ſion was completed: nor is it an eaſy matter to aſcertain the relative degrees of importance and rank which might then be annexed to theſe two kindred employments.

When the uſe of cavalry in war became frequent, we may eaſily ſuppoſe, that the perſons, who had been accuſtomed to rear and manage the king's horſes, would ſtand forth, as claiming ſuperior diſtinction, and as having a peculiar title to be conſulted. They were thus employed, under the ſovereign, in conducting that important part of the troops; and, by an eaſy tranſition, acquired a juriſdiction in ſuch controverſies, as were either of a military nature, or had ariſen in the army while it remained in the field *.

5. The writing of the king's letters, and the executing of the charters, or other deeds, that iſſued from the crown, became alſo the ſubject of a diſtinct occupation, that of the *ſecretary*. In thoſe times, when the clergy had acquired great influence, and when a pro-

* This officer was known to the Anglo-Saxons under the name of *Stallarius*. Spelm. Gloss. v. Constabularius. The mareschal seems to have been considered as the deputy of the constable.

ficiency

ficiency in the art of writing ſuppoſed an uncommon degree of literary education, the only perſon likely to be qualified for this employment was the *chaplain*; who might be conſidered as, in ſome degree, the keeper of the king's conſcience; and who, from the nature of thoſe religious offices which he performed, could ſeldom fail to acquire the confidence of his maſter.

When ſignatures were introduced, for aſcertaining the authenticity of writings, the office of keeping the king's ſeal, and of appending it to his deeds, was committed to the ſame perſon who had been employed in writing them.

As in determining law-ſuits, it was found expedient, in many caſes, to take down the ſentence of the judge in writing, the ſecretary was naturally employed for this purpoſe; and became keeper of the records of the king's court. From this branch of his duty, he got the appellation of *chancellor*; which is ſaid to have originally denoted a *ſcribe*, or *notary*; being derived from *cancella*, the place under the Roman government, allotted to perſons

of that profeſſion for carrying on their buſineſs*.

As this arrangement in the domeſtic adminiſtration of the ſovereign, ſuppoſes conſiderable wealth and magnificence; it was probably of a later origin in England than in ſeveral of the kingdoms upon the continent. It is reaſonable to ſuppoſe that the whole of the king's houſhold was at firſt committed to one principal ſervant; whoſe buſineſs having been, by little and little, augmented and rendered more burdenſome, was at length divided into theſe five different departments. A ſimilar plan of adminiſtration, in a more limited ſphere, was adopted by every great landed proprietor; who naturally multiplied his chief domeſtics, in proportion to the extent of his wealth; and often followed the example of the king, by dividing the affairs of his houſhold into the ſame number of branches†.

The longer theſe great officers had been

* This officer is clearly distinguishable in the Anglo-Saxon government. Spelm. v. Cancellarius.

† Pasquier in speaking of these great officers of the houshold

eſtabliſhed, they roſe to higher degrees of conſideration; and their authority was farther extended, from the ſuperintendence of the king's houſhold, to the direction and management of the kingdom. As, for the moſt part, they were originally choſen by the ſovereign, upon account of their ſuperior wealth, or abilities, which rendered them capable of ſupporting his dignity in the execution of the buſineſs committed to them; ſo the truſt and confidence which he repoſed in them, together with the ſhare of public adminiſtration which they enjoyed, afforded them numberleſs opportunitiss of augmenting their private fortunes, and of increaſing their influence. In proportion to their advances in wealth and

houshold observes, that they were gradually established in the families of the great lords and gentlemen. "Parquoy "estoient dessus tous, cinq estats plus estimez, le chance- "lier, grand chambellan, grand maistre, grand eschançon, "que nos anciens appelloient grand bouteéller, et con- "nestable. Nous estant par cecy monstrée une grand "œconomie: car auſſi n'y a il maison qui vueille tant soit "peu parôitre, en laquelle ces cinq estats ne se trouvent "estre nécessaires, encore que ce ne soit avec tiltres de "telle splendeur." Recherches de la France. liv. ii. chap. 12.

power, they were in a condition to render their offices more permanent. They were originally nominated by the king during pleaſure; but that ſuperiority, which had been the inducement to their firſt promotion, became commonly more and more conſpicuous during the continuance of their employments. It was, therefore, ſeldom found convenient to diſplace them: and, even after their deceaſe, the heir of that eſtate, which they had acquired, was naturally regarded as the perſon beſt qualified, and who had a preferable claim to inherit their dignity. By long uſage, theſe offices were thus rendered hereditary in particular families. To this obſervation, however, the office of chancellor, in moſt European countries, is an exception. As the chancellor was unavoidably a clergyman, who held his rank in the church, and the eſtate connected with it, only during life, he had commonly neither any opportunity of ſecuring the office to his family, nor any deſire of annexing it to his eccleſiaſtical dignity.

Of the influence eſtabliſhed by the great officers of the king's houſhold, the political conſtitution of Germany affords a remarkable inſtance.

inſtance. When the dominions of that empire, by the conqueſt of large territories in Italy, and in the ſouthern part of France, had been ſo enlarged as to comprehend three diſtinct kingdoms, the emperor was induced, in that ſituation, to appoint three different ſecretaries*. The officers of his houſhold were, upon this account, increaſed to the number of ſeven. In the progreſs of the German government, the power of theſe great officers advanced, as that of the emperor declined; and after the imperial dignity had become intirely elective, they aſſumed the privilege of *propoſing*, to the national aſſembly, the ſucceſſor to the crown; from which they at length proceeded to claim the ſole right of electing him. Hence the origin of that preciſe number of perſons who compoſed the primitive German *electors*.

The ſteward was originally the officer of the greateſt importance in the king's houſhold;

* The firſt was the ſecretary for Germany, properly ſo called; the ſecond for Italy, and the third for Arles. It is remarkable that theſe chancellors, having become ſecular princes, their offices have been attached to their eccleſiaſtical dignity.

becauſe

becauſe the ſupplying of his majeſty's table with proviſions was regarded as the chief concern of the family. We accordingly find that, in ſeveral countries of Europe, the perſon who enjoyed this hereditary office, attained a degree of rank and opulence which rendered him formidable to the ſovereign. In France, the mayors of the palace, after having for a long time poſſeſſed the real power and authority of the crown, were at length emboldened to throw off the maſk, and openly to mount the throne.

When the uſe of cavalry in war had become very extenſive, and when that part of the feudal armies had the principal ſhare in deciding the fate of battles, the conſtable, or mariſhal, was frequently in a condition to diſpute the ſuperiority with the ſteward or mayor of the palace. Thus, in Germany, when the throne happened to be vacant, the Elector Palatine, the mayor of the palace, was anciently appointed, for preventing the bad conſequences of an inter-regnum, to be the *vicar of the empire.* But in a ſubſequent period, this high dignity was claimed by the elector of Saxony, the conſtable; and, after violent

violent diſputes, and various determinations of the *diet*, was at laſt divided between thoſe powerful competitors.

In the ages of greater civility and improvement, when, from the complicated connexions of ſociety, its laws became numerous and of difficult interpretation, and when, from the anxiety of individuals to aſcertain their rights, the charters and writings proceeding from the crown were multiplied in proportion, the ſecretary, or chancellor, to whom the king committed that branch of buſineſs, was inveſted with powers of the greateſt conſequence, and therefore was exalted to the higheſt rank.

In thoſe opulent and poliſhed nations which have long been reduced under an equal and regular government; in which the impartial diſtribution of juſtice is looked upon as almoſt a matter of courſe; and in which the ſovereign is accuſtomed to govern by influence, more than by the exertion of his prerogative; in ſuch nations, the perſon who preſides over the public treaſury, who may be regarded as the ſubſtitute of the chamberlain, becomes the great channel through which the revenue

of

of the ſtate is conveyed, and by which the authority of the crown is maintained.

It is hardly neceſſary to remark, that this diſtribution of the buſineſs in the king's houſehold, into five departments, reaches far below the ſimple period of the Anglo-Saxon government which we are now conſidering. But, on the other hand, it merits attention, that when the exaltation of the ſovereign had multiplied the occupations belonging to theſe different branches, it became expedient, in ſome of them, to appoint a variety of deputies; many of whom, in particular kingdoms, roſe by degrees to ſuch conſideration and rank, as to appear no longer in a ſubordinate ſtation, and even to make the origin of their appointment be forgotten. This circumſtance muſt not be overlooked in peruſing the enumeration, given by many hiſtorians, of the principal officers in the court, or houſhold, of particular princes.

From the foregoing imperfect ſketch of the powers of the ſovereign, as well as of the conſtitution and privileges of the Wittenagemote, we may be enabled, notwithſtanding the darkneſs of our ancient hiſtory, to form an idea of the

the original Engliſh conſtitution. How remote this was from an *abſolute monarchy*, muſt be apparent to every one, who conſiders that the privilege of legiſlation, together with that of determining peace and war, and even that of controlling the executive power, was lodged in the national aſſembly. Neither can this government be deemed in a high degree ariſtocratical; ſince the national council was compoſed, not of a ſmall junto of nobles, but of all the landed proprietors, comprehending a great proportion of the whole people. It ſeems, in fact, to be that ſort of political ſyſtem which is likely to be eſtabliſhed in all rude and extenſive countries; before a few individuals have accumulated ſo much wealth as enables them to domineer over their inferiors; and before the king, in conſequence of his high ſtation and prerogatives, has had leiſure to acquire a revenue ſufficient to overthrow and bear down any oppoſition that can be apprehended from the moſt opulent of his ſubjects. It cannot, however, eſcape obſervation, that, although the powers committed to the monarch by the early Saxon conſtitution were ſmall, they were not accurately defined;

fined; and that, in the exercise of them, he enjoyed, upon this account, a good deal of latitude. Accurate limitations of power, and a regular system of subordination, the fruit of experience and foresight, cannot be expected to characterize the institutions of a simple people, who are usually guided by their feelings more than by reflection, and who attend more to the immediate effects of any measure, than to its remote consequences. As the Anglo-Saxon princes were entrusted with every branch of public administration, in which the Wittenagemote did not think proper to interfere; their conduct was directed, in a great measure, by particular conjunctures, and by the different unforeseen events which accidentally required their interposition. We need not be surprised, therefore, if in perusing the history of that period, while we discover strong marks of the weakness of the crown, we should also meet with some extraordinary exertions of the prerogative, and should at the same time observe, that these were suffered to pass without censure, or even without notice. It is a common source of mistake, among political writers, to consider

ſider theſe extraordinary exertions as proofs of the ordinary ſtate of the government; and to adduce as an illuſtration of the general practice, what is only the random and caſual exerciſe of a power, not yet brought to a regular ſtandard. We ſhall now examine the changes produced in the Engliſh conſtitution from the reign of Egbert to the Norman conqueſt.

CHAP.

CHAP. IX.

Of the principal Events from the Reign of Egbert to the Norman Conqueſt.

WHILE England, by the union of the different ſtates of the heptarchy, was emerging from barbariſm, and laying the foundation of a great and powerful kingdom, a new enemy involved her in a ſeries of freſh calamities; and contributed to retard the progreſs of her improvements. The inhabitants of the northern part of Germany, who retained their ancient manners, and were ſtill much addicted to piracy, continued to infeſt the coaſts of Britain and France, and of ſuch other European countries as, by ſome advancement in cultivation, preſented an inviting proſpect of plunder. About the reign of Egbert, ſeveral bands of thoſe pirates, known by the general name of Danes, landed in England; and, after committing great ravages, were generally ſucceſsful in carrying off their booty. Upon the death of that prince, whoſe vigour had

had kept them under ſome reſtraint, their incurſions became bolder and more frequent; they made their attacks in larger parties; and, having been often victorious over the forces that could be aſſembled againſt them, they were at length encouraged to form ſettlements in different parts of the country. From the time when the kingdoms of the heptarchy were united, to that of the Norman conqueſt; a period extending to about two hundred and fifty years, and comprehending a ſeries of nineteen monarchs; the Engliſh were, with little interruption, engaged in a courſe of hoſtilities with thoſe invaders; and ſubjected to perpetual inquietude and diſorder. In the reign of Alfred, the grandſon of Egbert, the Daniſh arms had been ſo ſucceſsful, and their acquiſitions had become ſo extenſive, as to threaten an entire conqueſt of the kingdom.

The hiſtory of that prince exhibits a pattern of the hero and ſtateſman, equal to whatever is recorded of ancient patriotiſm, and even to whatever correct fiction has been able to ſuggeſt, in order to excite admiration and eſteem. During the reign of Ethered, his elder brother, by whom he was unjuſtly deprived of the

patrimony left him by his father, he diſcovered neither any marks of reſentment for the private injury he had ſuſtained, nor of what prevailed ſo univerſally among the princes of that age, an ambition to poſſeſs the crown; but with uniform alacrity ſeconded all the public meaſures of the king; and, while yet at an early period of life, diſplayed uncommon valour and talents, in oppoſing the enemies of his country. When he afterwards ſucceeded to the throne, his magnanimity and firmneſs were put to a ſevere trial in the ſchool of adverſity. Though he had been victorious over the Danes in many conflicts; yet the ſwarms of thoſe invaders multiplied ſo faſt; and from every quarter puſhed their depredations with ſuch rapidity, that the Engliſh, throughout the greater part of the kingdom, became quite diſheartened, and ſubmitted to the conquerors. His ancient ſubjects, the weſtern Saxons, alone retained their fidelity, and ſupported the intereſt of their monarch: but theſe were incapable of reſiſting the torrent which broke in upon them, from the accumulated force of their enemies. After many fruitleſs efforts, and upon a ſudden report of a new invaſion

by

by a powerful body of Danes, that ſpread univerſal conſternation, the king found himſelf almoſt entirely abandoned: and, being able no longer to keep the field, was obliged to diſband his remaining adherents, and to provide for his preſent ſafety; he was even under the neceſſity of concealing himſelf by various artifices, and in mean diſguiſes. The diſtreſſes to which he was expoſed, and the private adventures which he met with, in that ſituation, appear not unworthy of notice; as they relate to a perſon of ſuch eminence; and as the fate of England depended upon his ſurmounting the difficulties in which he was involved. In the garb of a common ſoldier he remained for ſome time unknown, in the houſe of one of his own herdſmen: upon which occaſion, hiſtorians have mentioned a little incident, which exhibits a ludicrous picture of royalty placed in awkward circumſtances without being degraded by them. While the king was one day ſitting by the fireſide, and trimming his bow and arrows, the woman of the houſe, who had no ſuſpicion of the quality of her gueſt, happened to be toaſting bread; and, having occaſion to go about ſome other affairs,

ſhe found, at her return, that the cakes were burned; with which being greatly provoked, ſhe heartily ſcolded his majeſty, telling him, that though he neglected to turn her cakes, he was always very ready to eat them.

Meanwhile the royal demeſnes became a prey to the Daniſh forces; who being no longer reſtrained by the apprehenſion of an enemy, gave a looſe to their cruelty and rapacity. Alfred, reduced in this manner, to the condition of an outlaw in his own dominions, and having collected a few faithful followers, wandered for ſome time from place to place, finding ſhelter from the woods and marſhes, which covered a great part of the country, and which were of difficult acceſs even to the natives themſelves. But his principal retreat was in the middle of an extenſive moraſs, formed by the rivers Thone and Parret in Somerſetſhire; which was almoſt entirely ſurrounded with water; and which afforded great plenty of fallow deer, and other wild animals fit for ſubſiſtence. In this place the king took up his reſidence; and erecting ſome fortifications, remained for near the ſpace of a twelvemonth. Here he had leiſure to reflect upon the uncer-

tainty

tainty of human grandeur; to weigh the real value of all human enjoyments; and to revolve in his mind thoſe benevolent and patriotic plans, by the execution of which he came afterwards to be revered by his countrymen, and has excited the admiration of mankind. From this retreat he made many ſecret excurſions, in order to procure information or plunder, and to revive the drooping courage and ſpirits of his companions.

At length the earl of Devonſhire, having ſuddenly attacked and routed a large party of the Danes, preſented to Alfred a favourable opportunity of appearing once more in the open field, and of animating his ſubjects to hazard another attempt for the recovery of the kingdom. Amid all the difficulties and dangers to which this monarch was expoſed, he appears to have uniformly diſcovered a mind cool and deliberate, reſolute with caution, fruitful in expedients, and dexterous in executing ſuch meaſures as the ſingular and deſperate poſture of his affairs made it adviſeable to adopt. On this occaſion he is ſaid to have employed a ſtratagem, ſuited to the ſtate of diſcipline in the armies of that age, and

which recals the memory of thoſe military adventures related in the early periods of antiquity. In the diſguiſe of a minſtrel and fortune-teller, attended only by one companion, he viſited the Daniſh camp; and ſupported the character with ſo much addreſs, as to afford univerſal entertainment, and to paſs through every quarter, not excepting even the general's tent, without incurring the leaſt ſuſpicion. Having thus procured every poſſible information, and having, by means of a previous intercourſe with his nobles, ſuddenly collected a great body of his ſubjects, he found himſelf at the head of a powerful army, exulting in the recovery of their monarch, and eager to be revenged of their oppreſſors. With this force he fell unexpectedly upon the enemy; and entirely defeated them. His victory was ſo complete, that the Danes were incapable of any further oppoſition; and in a little time after were entirely ſubdued. Some part of them were driven out of the kingdom; the reſt were under the neceſſity of ſubmitting to ſuch terms as he thought proper to impoſe.

The moderation and clemency of this prince, and the prudence which he diſplayed in the improve-

improvement of theſe advantages, were no leſs conſpicuous, than the vigour and abilities by which they were obtained. The Danes who ſubmitted to him were ſent to reſide in Eaſt Anglia, Northumberland, and ſome of the neighbouring parts of the kingdom, where many of their countrymen had long been ſettled; and they were admitted to the enjoyment of the ſame privileges with his other ſubjects. By the zealous interpoſition of Alfred, they were alſo happily perſuaded to embrace the Chriſtian religion; a circumſtance neceſſary to remove their prejudices againſt the ancient inhabitants, and to unite thoſe different tribes of people in one community.

Upon the reſtoration of peace, the firſt attention of the monarch was employed in providing a fleet, ſufficient to oppoſe any new invaſion of the Daniſh pirates; in erecting fortifications upon the coaſts more immediately expoſed to their depredations; in making regulations for aſſembling the inhabitants upon any ſudden emergency; in rebuilding the towns that had been deſtroyed; and in repairing the waſte and deſolation which the coun-

try had ſuffered from a long courſe of rapine and violence.

To compile and publiſh a code of ſtatutes, is, in a rude nation, a meaſure of the higheſt utility, for inſtructing an ignorant people in thoſe rules by which they are to be governed; and accordingly we find that this has been the great object of almoſt all the diſtinguiſhed princes of an early period. It appears that Alfred beſtowed much labour and time upon a work of this nature; of which the greateſt part is now loſt. It is probable, that, from the various feudal inſtitutions and cuſtoms, which had prevailed either in England or upon the neighbouring continent, he ſelected ſuch as were accounted the moſt beneficial, and moſt adapted to the peculiar circumſtances of his time and country: and that, having eſtabliſhed theſe regulations by the authority of his great council, he endeavoured, in the moſt effectual manner, to produce a degree of uniformity in law and government, throughout the whole of the kingdom. We are not, however, to imagine, that all differences in the cuſtoms of different parts of the country were thus entirely

tirely abolished. On the contrary, we find that, in consequence of the new settlements in the northern part of the kingdom, a multitude of Danish customs had been introduced; and that the people were now distinguished into three great branches, according to the varieties in the system of private law, established among the Western Saxons, the Mercians, and the Danes.

But the promulgation of good laws is, for the most part, and especially in a country remote from civilization, a matter of less difficulty and importance than the vigorous and impartial execution of them. When a regulation is made, the beneficial objects, which it is intended to promote, are commonly surveyed in that distant and dispassionate view which admits the full exertion of patriotic affections; but when it comes to be enforced by the punishment of transgressors, it then frequently assumes a different aspect; and the interest of the public is likely to be obscured and counteracted by the private connections, and by the partiality and prejudice of individuals: not to mention that the splendor and eclat, which accompany the temporary interpositions of the legislature,

legiſlature, do not deſcend to the unremitting and laborious attention, to the painful and invidious taſk, of thoſe inferior magiſtrates who render the law effectual. It was here that the genuine virtue of Alfred appeared moſt conſpicuous. From the long courſe of depredation to which England had been expoſed, that country was become a ſcene of the utmoſt licenſe and diſorder; exhibiting, on the one hand, a people fierce and barbarous in their manners, accuſtomed to live by robbery and violence; and on the other, a ſet of nobles, in reality the leaders of different pillaging parties, abuſing that authority and juriſdiction with which they were inveſted, by protecting their adherents from puniſhment, and by oppreſſing thoſe who had fallen under their diſpleaſure. Yet ſuch was the attention of this monarch to the inferior departments of government, ſo great was his vigilance in examining the conduct of judges, and his rigour in puniſhing them for malverſation in office, that, in a ſhort time, theſe evils were in a great meaſure removed, and an equal and regular adminiſtration of juſtice was introduced. In one year of his reign no fewer than forty-four magiſtrates,

trates, it is ſaid, were put to death, for miſbehaviour in their judicial capacity; a proof that corruption and licentiouſneſs had riſen to an amazing pitch. There can be little doubt, that in the accounts tranſmitted by hiſtorians, the accuracy and regularity of the police, eſtabliſhed by Alfred, has been greatly exaggerated; but even theſe exaggerations, the uſual effects of wonder and admiration, may ſerve to convince us, that he made great improvements upon the former ſyſtem. We are informed that, in order to try the ſucceſs of his inſtitutions, he cauſed golden bracelets to be hung up near the highway; and that no perſon, ſuch was the terror of the magiſtrate, adventured to touch them.

By the eſtabliſhment of good order and tranquillity, the people were encouraged to follow thoſe peaceable occupations which had been totally interrupted by the preceding diſorders. The king was indefatigable in his efforts to promote manufactures, and to excite the induſtry of his ſubjects; by employing artificers in great public works; by inviting foreigners to ſettle in the country; and by rewarding the inventors of new arts. He contributed,

tributed, in a particular manner, to the extenſion of foreigh commerce, by protecting it with his fleet, and by beſtowing marks of his favour upon ſuch as became eminent for their ſkill in navigation.

He was no leſs attentive to the encouragement of literature, not only by his patronage, but alſo by his example. His ardour, in this reſpect, was the more remarkable, as it ſurmounted the diſadvantages he lay under from the neglect of his early education; for, among the anecdotes which have come down to us concerning the private life of Alfred, it is related, that he was twelve years of age before he had been taught to read; and that he firſt felt a deſire of being inſtructed, in this particular, from the recital of certain pieces of poetry, with which the queen his mother was much delighted. Prompted, however, by a ſtrong inclination for literary purſuits, he ſoon became, not only a proficient in the Latin language, and in ſuch branches of learning as were reſpected in that age, but even a writer of eminence, both in proſe and in verſe. As a poet, he ſeems to have employed himſelf chiefly in tranſlating, or compoſing, *fables*, or *apologues*.

Theſe

Theſe compoſitions are uſually the firſt attempts, in a rude nation, to illuſtrate, by ſimple and familiar examples, the proverbs, or maxims for the conduct of life, which obſervation and experience have ſuggeſted, and which, as containing important information to an illiterate people, are frequently repeated, and appealed to, in ordinary converſation. The labours of this eminent ſtateſman appear, in that particular, to have coincided with thoſe of the firſt great teacher of morality among the Greeks. It is probable that thoſe two celebrated perſonages were directed in the choice of their ſubject by a ſimilarity of character; and it may perhaps be ſuſpected, that both of them were more remarkable for their philoſophy and public ſpirit, than for their poetry.

Hiſtorians have mentioned the bodily accompliſhments of Alfred, as correſponding to the extraordinary endowments of his mind. He was diſtinguiſhed by the ſtrength and activity, as well as by the dignity and gracefulneſs of his perſon; and while his dexterity and addreſs, in martial exerciſes, excited univerſal applauſe, he gained the hearts of his ſubjects by an affable and engaging deportment.

After

After all, though the hiſtory of this monarch may be accounted ſufficiently authentic, to afford a ſolid conviction of his exalted merit; ſome allowance, no doubt, muſt be made for the colouring produced by that admiration which was due to his character, and which has been heightened by the remoteneſs of the period in which he lived. We need not be ſurpriſed, therefore, to meet with errors and prejudices, concerning his public tranſactions; and in particular, to find that he was ſuppoſed to be the author of ſeveral regulations, which he only revived, or brought to greater perfection than they had formerly attained. The great changes which he produced in the ſtate of his country, by bringing it from anarchy and confuſion into a degree of order and regularity, led his countrymen, in ſubſequent ages, to fix their attention upon him, as the perſon from whom they had derived the entire model of their conſtitution. He is thus held, by many hiſtorians, to have firſt divided the kingdom into tythings, hundreds, and ſhires, and to have introduced a peculiar ſyſtem of policy connected with thoſe diviſions; though it ſeems now to be clearly proved, that theſe regulations

exiſted

exiſted in England before his time, and that they extended to other European kingdoms. The inſtitution of *juries* has, in like manner, been aſcribed to this monarch; though there is good reaſon to believe that it aroſe from the general ſituation of the Gothic nations; and that it had a very early eſtabliſhment in all of them. Alfred, in a word, has become the Engliſh Lycurgus; and his interpoſition is the great engine which politicians have employed for explaining the origin of ſuch particulars, in the Engliſh government, as have excited uncommon attention, and are too remote, in their beginnings, to fall within the limits of authentic hiſtory.

For near eighty years after the death of that prince, England appears to have been ſucceſsfully defended againſt every foreign invaſion; though ſhe experienced a variety of diſturbances, occaſioned by the domeſtic quarrels and inſurrections of the Danes and other inhabitants of the country. During this period we may diſtinguiſh the reigns of Edward the elder, the ſon of Alfred, of Athelſtan, and of Edgar, as remarkably vigorous; and as filled with exploits, which, if they make no very ſplendid figure

figure in the general ſcale of hiſtorical events, were, however, of conſiderable conſequence to the peace and internal tranquillity of the kingdom.

Thoſe princes are ſaid to have adopted a meaſure, which, in that early age, appears extremely ſingular. They are ſaid to have kept in pay a regular body of troops, collected from their Daniſh ſubjects; whoſe military character, it ſeems, was ſuperior to that of the other inhabitants. Though the bulk of the people were not unfit for war, and, by their ordinary employments, were not hindered from taking the field upon very ſhort preparation; yet the numerous piratical invaſions to which they were expoſed, and by which they were held in continual warfare, ſuggeſted the ſame ſort of military eſtabliſhment that has been found convenient in all civilized nations. The Daniſh families were employed, in preference to the Engliſh, from the ſame policy, which, in later times, made the inhabitants of Switzerland be engaged in the ſervice of many European princes. As thoſe mercenaries, however, were quartered about the country, and were probably not much under the controul of the civil

civil magiſtrate, they were guilty of many irregularities, and rendered themſelves univerſally odious. They poſſeſſed all the power, and diſcovered, we may ſuppoſe, all the inſolence of a ſtanding army; unreſtrained by the watchfulneſs of a regular government, or by the influence of civilized manners. Hence the appellation of a *lurdane*, or *lord-dane*, which was beſtowed upon them, came to be uſed as a term of reproach; and ſignified an idler and oppreſſor. Their ſituation led them, at the ſame time, to ſeek diſtinction, by the ſuperior elegance of their dreſs and behaviour; and we are told, that they were accuſtomed frequently to change their cloaths, to comb their hair once a day, and to bathe or waſh themſelves every Sunday. By theſe effeminate arts they became the favourites of the women; and were ſo ſucceſsful in their gallantries, as to debauch the wives and daughters of many noble families *.

* "Habebant etiam ex conſuetudine patriæ unoquoque "die comam pectere, ſabbatis balneare, ſæpe etiam veſtitu- "ram mutare, et formam corporis multis talibus frivolis "adjuvare; unde et matronarum caſtitati insideabantur, et "filias etiam nobilium concubinarum nomine detinebant." Chron. Joan. Wallingford.

In the reign of Ethelred, a weak and pufillanimous prince, England was again infeſted by more numerous ſwarms of the Northern pirates; and at length was invaded by a formidable army under Sweyn, the king of Denmark, and Olave the king of Norway. Ethelred, unable to reſiſt theſe united forces, had recourſe to the ineffectual and ruinous expedient of purchaſing peace by the offer of a pecuniary compoſition; and when thoſe princes had returned to their own country, he excited his Engliſh ſubjects, to gratify their reſentment againſt the Danes, by taking advantage of their ſecurity, and putting them to death in cold blood. The extent of this maſſacre, ſo diſgraceful to the monarch, and to the nation, cannot eaſily be aſcertained. The greater part of the hiſtorians conſider it as extending to the whole of the Daniſh race at that time to be found in England; but the improbability of this, together with the authority of one ancient author, makes it reaſonable to ſuppoſe, with Mr. Hume, that the ſlaughter was, for the moſt part, limited to thoſe mercenaries againſt whom the rage of the populace was more immediately d

To

To revenge an act of ſo much perfidy and cruelty, Sweyn, without loſs of time, made another deſcent into Britain; and after deſtroying many of the towns, and deſolating a great part of the country, he ſeems to have meditated an entire conqueſt of the kingdom. He did not live to complete his deſigns; but theſe were proſecuted by his ſon Canute; who met with little oppoſition; and in a ſhort time added the Engliſh monarchy to that of Denmark, which he poſſeſſed by inheritance. This prince, by his abilities, by the prudence and lenity of his adminiſtration, and by the extent of his dominions, was juſtly entitled to the appellation of *great*, which he has received from poſterity. In England, after the firſt effects of the conqueſt were over, he endeavoured to procure the good-will of his ſubjects, by reducing the Engliſh and Daniſh inhabitants under the ſame laws, and by aboliſhing all diſtinctions between them. He publiſhed a collection of laws, which has been preſerved. After this monarch, two of his ſons reigned ſucceſſively in England; but, as they died without iſſue, the crown was reſtored to a prince of the Saxon line, known by the name of Edward the Confeſſor.

The conqueſt of England by the Danes appears to have been productive of no other political conſequences, beſide the interruption given to improvements, by the bloody and deſtructive wars with which it was attended. When Britain was deſerted by the Romans, and fell under the Anglo-Saxon government, the country, which had made conſiderable progreſs in arts and civilization, was, of a ſudden, reduced into a ſtate of barbariſm, and underwent a total revolution of its political ſyſtem. By the Daniſh conqueſt, one ſet of barbarians were ſubjected to another, of kindred origin and manners; ſo that the ſceptre was placed in different hands, without any alteration in the maxims by which it was ſwayed, or the authority by which it was maintained.

From the beginning to the end of the period, which is the immediate ſubject of this review, the circumſtances of the kingdom were ſuch, as contributed to render the government more and more ariſtocratical.

It has been already obſerved, that the landed eſtates, originally occupied by the Saxon conquerors of England, were of moderate extent; for

for which reaſon there came to be a great number of allodial or independent proprietors. This was what might be expected, from the very limited power and opulence of the ſeveral heads of families who ſettled in the country, and from their want of the knowledge and experience requiſite for the management of extenſive poſſeſſions. During the continuance of their ſettlement, however, and the conſequent improvement of their circumſtances, the induſtry and abilities, or the good fortune, of individuals, were attended with gradual accumulations of wealth, and with proportional differences in the diſtribution of landed property.

From the reign of Egbert, when England became an extenſive kingdom, the ſovereign was neceſſarily removed to a diſtance from a great part of his ſubjects; who, for that reaſon, were equally beyond the reach of his protection, and of his authority. For putting a ſtop to thoſe predatory incurſions, by which the inhabitants of different diſtricts were frequently haraſſing and injuring one another, the forces employed by the crown could ſeldom be brought to act, either with ſufficient

quickneſs to relieve the ſufferer, or with ſufficient perſeverance to chaſtiſe the offender. It was neceſſary, therefore, when the property of any perſon was invaded, or threatened with invaſion, by a ſuperior power, that the owner ſhould not, in many caſes, depend upon the interpoſition of the ſovereign or public magiſtrate, but ſhould endeavour to procure the immediate aſſiſtance of ſome of his neighbours. As the reciprocal acts of hoſtility, which were frequently committed, gave riſe to hereditary feuds among particular families; ſo they occaſioned, among other families in the ſame neighbourhood, a variety of combinations and alliances for mutual defence and ſecurity. When the parties, who thus formed a defenſive alliance, had been expoſed to the ſame difficulties, and expected to derive an equal benefit from their agreement, they were led to unite upon equal terms, and remained in a ſtate of independence. Of the ſocieties formed in this manner, we have many inſtances, both in England, and in the other countries of Europe*.

* They have been called *ſodalitia, fraternitates.* Dr. Hickes, Diſs. Epiſt. p. 21.

But

But it happened more frequently that ſmall proprietors, being expoſed to continual oppreſſion, and to every ſort of injuſtice, from perſons of greater opulence, were obliged to ſolicit the aid of one powerful neighbour, in order to ſhelter them from the attacks of another. In ſuch a ſituation they could not pretend to form an alliance upon the footing of equality; but were commonly reduced to the neceſſity of purchaſing protection by the offer of ſubmiſſion and ſervices. As they were to obtain, from their protector, the ſame advantages which he beſtowed upon his ancient military ſervants, it was reaſonable that they ſhould, in like manner, acknowledge his juriſdiction, and contribute to the advancement of his power and authority. Thus, in ſome caſes, by a formal agreement, in others, perhaps, by a long and uniform ſubmiſſion to the feudal ſervices, many renounced that allodial property which they were no longer able to maintain; and, from the proſpect of living in greater ſecurity, allowed themſelves to be degraded into the ſtate of military retainers or vaſſals.

From a ſimilarity of circumſtances, theſe tranſactions were often repeated in different

parts of the country, and were gradually extended over the whole kingdom. The more the demeſnes of particular barons had been increaſed by ſuch voluntary reſignations, the remaining proprietors of ſmall eſtates were the leſs able to retain their independence; and found it the more expedient to provide for their own ſafety, by incorporating themſelves in ſome great feudal dependency. The allodial proprietors were, in this manner, continually diminiſhing; the landed property of England was daily accumulated in fewer hands; and the diſtricts poſſeſſed by particular barons, who profited by the reduction of their neighbours into a ſtate of ſubordination, were proportionably enlarged.

By theſe changes, the nobility, it is evident, muſt have obtained more weight in the ſcale of government. While the landed eſtates of individuals were ſo ſmall as barely to ſupply the neceſſaries of life, the owners were too inconſiderable to procure influence over others, and too numerous to proſecute an uniform plan for the advancement of their common intereſt. But in proportion as particular perſons had acquired extenſive poſſeſſions, they were enabled

bled to maintain a train of dependants and followers, directed on all occaſions by the will of their feudal ſuperior, and inured, by long habits, to ſcruple at nothing, in order to gratify his ambition, or to exalt his dignity. From the ſmallneſs of their number, theſe great proprietors might, at the ſame time, be combined with more facility, in oppoſing the exertions of the prerogative.

The ſovereign, we may ſuppoſe, was not an idle ſpectator of theſe alterations in the condition of his ſubjects. As every opulent baron obliged his poorer neighbours to become his vaſſals, the king alſo exerted himſelf in the protection of ſuch as reſided near the royal demeſnes, and acquired over them the rights of a feudal ſuperior. But the acceſſions acquired in this manner, to the revenue of the crown, and to the number of crown vaſſals, were probably not ſufficient to counterbalance the vaſt accumulation of landed property under the lords of particular diſtricts. We find accordingly, that about the reign of Edward the Confeſſor, a Godwin, earl of Weſſex, a Leofric, duke of Mercia, a Siward, duke of Northumberland, with a few more barons, had become ſo powerful, as to be the objects of conſtant alarm

alarm and jealouſy to the crown, and in a great meaſure maſters of the government.

The authority of the Anglo-Saxon princes was, on the other hand, weakened, in many caſes, and prevented from acquiring ſtability by the defects of their title to the ſovereignty.

The rules of ſucceſſion to the crown appear, in all countries, to have been founded upon the ſame principles which govern the inheritance of private eſtates. According to the primitive notions of mankind, it was held, that, upon the death of any perſon, his eſtate ſhould belong to his neareſt relations, who, by being members of the ſame family, appeared to have the moſt intimate connexion with the family goods, of which they had formerly been a ſort of joint poſſeſſors with the deceaſed. But in that ſtate of the world, in which every family required a military leader to provide for their defence, the perſon inveſted with this office was by degrees permitted to aſſume the *management*, and at length to acquire the *property*, of that family-eſtate which was committed to his protection. Hence the right of *primogeniture* in ſucceſſion; which, in oppoſition to the feelings of natural juſtice, has been

been introduced from conſiderations of expediency. The eldeſt of the ſons, being commonly the firſt who acquired experience and reputation in war, was, upon the death of the parent, admitted to be the leader and heir of the family; and when a general practice in his favour had once been eſtabliſhed from the ordinary courſe of things, it was maintained by the force of cuſtom, even in ſingular caſes, where he had not the ſame ſuperiority. In the ſucceſſion to a monarchy there occurred a double reaſon for introducing this right of primogeniture; as the monarch was not only the leader and repreſentative of the nation, but alſo the heir of that private eſtate, which had been the original ſource, and was the principal ſupport of his dignity. But in kingdoms of great extent, and which had made but ſmall progreſs in the arts of government, the indiviſible ſucceſſion of the crown was often maintained with greater difficulty than occurred in the tranſmiſſion of private eſtates; becauſe the ſeveral diſtricts of an extenſive monarchy, being at a great diſtance, and feebly united, were apt, upon the death of a monarch, to fall aſunder, and to embrace the party

party of thoſe different members of the royal family, who might be tempted to aim at the ſovereignty.

The rules of ſucceſſion to the crown of England appear, in the period now under examination, to have been gradually advancing towards a regular ſtandard; but were far from having yet attained a perfect uniformity. Among the nineteen princes who reigned from the union of the Heptarchy to the Norman conqueſt, we meet with no fewer than eight, who, according to the notions of the preſent age, muſt be regarded as uſurpers; and ſeveral of theſe obtained the crown by titles, which, though conſidered as in ſome degree irregular, had not, in that rude age, been entirely exploded.

Inſtead of the eldeſt ſon inheriting the eſtate of a family, it is common, in early ages, that the children ſhould be altogether ſupplanted by the brothers and other collateral relations; who, by having arrived at a greater maturity, and poſſeſſing ſuperior proweſs, are enabled to put themſelves at the head of their kindred. Thus in many of the hordes, or petty nations, upon the coaſt of Guinea, the children are ſaid

to

to inherit nothing from their father but his arms; his other effects are carried off by the older relations of the family. In the ſucceſſion of the ancient kings of Numidia, though a country far advanced beyond the ſtate of primitive barbariſm, the brother, as we are informed by Livy, was preferred to the children of the preceding monarch. A ſimilar practice may be diſcovered in ſeveral parts of the eaſtern world. It obtains at preſent in the Ladrone iſland; as it formerly regulated the tranſmiſſion of the crown in the kingdom of Siam, and in ſome dynaſties of the Chineſe empire. Of this preference of the brothers, or other relations, to the direct deſcendants, there are many traces in the early hiſtory of modern Europe; and among the Anglo-Saxon kings, even after the reign of Egbert, we meet with four inſtances of it; in the perſon of Alfred the Great, of Edred, of Ethelred, and of Edwy; the three firſt of whom ſucceeded to a brother; the laſt to an uncle; and all of them, in prejudice to the children of the predeceſſor. To theſe may be added, Edgar, ſurnamed *the Peaceable*, by whom Edwy his brother was dethroned.

According

According to the manners of a rude people, there is frequently little difference, with regard to the right of ſucceſſion, between the children produced by a concubine and thoſe who are born in marriage. It is the circumſtance of living in the father's houſe, and having a ſort of joint poſſeſſion of the family eſtate, that is apprehended chiefly to beſtow upon the children a title to the inheritance; and, in a country ſo deſtitute of refinement or delicacy, that the wife is indifferent about the fidelity of her huſband, or is of ſo little conſequence that her jealouſy is not regarded, his baſtards are likely to be often brought up under his own eye, and to receive a promiſcuous maintenance with his legitimate offspring. This obſervation may be illuſtrated from the hiſtory of early nations, both ancient and modern, and in all quarters of the world. It is remarkable that, among the Iſraelites, in the time of their judges, the lawful children of Gilead had, apparently, no other way of preventing Jephthah, their baſtard brother, from ſucceeding to the father's eſtate, than by driving him out of the family

See Judges, chap. ix.

The

The ſtrictneſs of morals introduced by chriſtianity, contributed in Europe to diminiſh the privileges of baſtard children. It does not, however, appear, that, even ſo late as the time of the Norman conqueſt, they were underſtood, in any European country, to be totally diſqualified from inheriting eſtates. In England, not to mention the inſtances that might be collected among the kings of the Heptarchy, we find that Athelſtan, the natural ſon of Edward the elder, was permitted to mount the throne, in preference to the lawful children of his father.

The acceſſion of Canute was merely the effect of conqueſt; though that prince endeavoured to ſupport his claim by means of a ſtipulation, real or pretended, with the former king. Upon the reſtoration of the Saxon line, the nobles had acquired ſo much power as enabled them to diſpoſe of the vacant throne. To their favour Edward the Confeſſor, who uſurped the right of the lineal heir, was principally indebted for the crown; and the advancement of Harold had confeſſedly no other foundation.

By theſe numerous deviations from the regular

gular courſe of ſucceſſion, the monarch was prevented from acquiring that accumulation of hereditary influence, which is the effect of an uninterrupted and long-continued lineal deſcent; at the ſame time that thoſe princes who obtained the crown in an irregular manner were, upon that account, ſubjected to difficulties, from which they were obliged to extricate themſelves by courting the nobility, and by making ſuch conceſſions as tended to alter the balance of the conſtitution.

From a ſingular incident, in the reign of the firſt Edmund, and which occaſioned the death of that prince, we may eaſily diſcover that the Anglo-Saxon kings depended, in a great meaſure, upon the arbitrary aſſiſtance of their followers, for maintaining the dignity and authority of the crown; and were far from being provided with proper reſources for ſecuring a decent reſpect and obedience to their commands. "As Edmund, one day, was ſolem-
"nizing a feſtival in the county of Gloceſter,
"he remarked, that Leolf, a notorious robber,
"whom he had ſentenced to baniſhment, had
"yet the boldneſs to enter the hall where he
"dined, and to ſit at table with his attendants.

"Enraged

" Enraged at this inſolence, he ordered him
" to leave the room; but on his refuſing to
" obey, the king, whoſe temper, naturally cho-
" leric, was inflamed by this additional inſult,
" leaped on him himſelf, and ſeized him by
" the hair; but the ruffian, puſhed to ex-
" tremity, drew his dagger, and gave the
" king a wound, of which he immediately
" expired

Hume's History of England.

CHAP. X.

Variations in the State of Tythings, Hundreds, and Shires.

THE reſignations of land, made by allodial proprietors in order to procure the patronage and protection of a feudal ſuperior, were moulded in a particular manner, and received a peculiar direction, from the inſtitutions formerly mentioned, of tythings, hundreds, and ſhires; as, on the other hand, the ſtate of theſe inſtitutions underwent a great alteration from the progreſs of thoſe reſignations.

A tything was compoſed of a number of heads of families, who, poſſeſſing allodial property of ſmall extent, and therefore having few dependants, found it convenient to live together in the ſame village or neighbourhood, for their mutual defence and ſecurity. The bulk of the free people, or allodial proprietors, appear to have been originally incorporated in the different tythings, throughout the kingdom; though it is probable at the ſame time, that

that there were particular thanes, or military leaders, who, from their ſuperior wealth and power, had no occaſion to join in any tything; and who lived, in a ſtate of greater independence and dignity, at the head of their own bondmen, or tenants and vaſſals. Beſide the villages, therefore, which were compoſed of the freemen, and which had the denomination of tythings, there were others, compoſed of the dependants of a feudal ſuperior, placed under his immediate juriſdiction and authority*.

The primitive borſholder, or tythingman, was elected by the freemen of the tything over which he preſided; and at firſt was probably but little ſuperior to them in opulence. By degrees, however, the rank which he enjoyed,

* See the laws ascribed to Edward the Confessor, published by Lambard aud Wilkins. L. 21. is translated as follows: "Archiepiscopi, episcopi, comites, barones, *et* "*omnes qui habuerint sacham et socam, thol, theam et infang-* "*thefe*, etiam milites suos, et proprios servientes, scilicet "dapiferos, pincernas, camerarios, pistores et cocos, sub "suo friborgo habeant. Et item isti suos armigeros, vel "alios sibi servientes sub suo friborgo. Quod si cui foris- "facerent et clamor vicinorum de eis assurgeret, ipsi tine- "rent eos rectitudini in curia sua: illi dico qui haberent sa- "cham et socam, thol et theam, et infangthefe."

together with the influence, and the perquiſites, which he derived from thence, enabled him to increaſe his fortune, and to extend his authority over the different members of the community. Upon his deceaſe therefore, the perſon who inherited his eſtate, obtaining a great part of the weight and conſideration of the predeceſſor, was naturally promoted to the ſame office; which after being continued for many generations in the ſame family, and beſtowing upon the repreſentative of it ſucceſſive accumulations of property, was at laſt regarded as no longer elective, but as a permanent hereditary dignity. The borſholder came thus, in his own right, to demand military ſervice from the members of the ancient tything; and to claim the privilege of being their judge both in civil and criminal matters. The tything, in ſhort, was converted into a barony; and that voluntary combination of the inhabitants, intended for their mutual defence and ſecurity, was now loſt in the more intimate connection between a ſuperior and his vaſſals.

As the preſident of a tything advanced in the acquiſition of this hereditary dignity, and found that his authority depended leſs upon the

the conſent of his original conſtituents, he became leſs attentive, we may ſuppoſe, to the inferior duties of his office; and the police of the village, in matters of ſmall moment, was at length committed to a deputy. The remains of this inferior officer ſeem to be ſtill preſerved, in the annual election of a perſon to preſide in each of the towns or pariſhes of England; who in ſome caſes retains the old appellation of headborough, or tythingman; but who, from the branches of buſineſs that have ſince devolved upon him, is more commonly called the *petty conſtable.*

Similar cauſes produced a change of the ſame ſort in the condition of the *centenarius.* This magiſtrate, like the tythingman, was originally choſen by the freemen of the diſtrict over which he preſided; but as the richeſt man of the diſtrict was moſt likely to carry the election, ſo the longer any individual had remained in the office, he became, from the many opportunities it afforded of increaſing his riches, the more ſecure of holding it for the future; and for the ſame reaſon, the heir of his private fortune, to whom he communicated his family intereſt, had likewiſe the probability

bability of obtaining the ſame dignity in preference to every competitor. Thus the leader of the hundred was, through length of time, converted into an hereditary officer; and, from the ſuperiority of his original office, was enabled to eſtabliſh a permanent authority over the ſeveral tythingmen of his diſtrict. When theſe laſt had become the hereditary leaders of tythings, they were frequently reduced, therefore, into a ſtate of feudal ſubordination to the hundreder. In other caſes, the influence of this greater magiſtrate was exerted in bringing particular tythings under his immediate protection, and in checking and ſupplanting the tythingmen, who might otherwiſe have acquired a feudal authority in theſe little ſocieties.

When the *centenarius* became a perſon of too much conſequence to execute the inferior branches of buſineſs connected with his department, a deputy was appointed for that purpoſe; whence the office of the *high conſtable*, elected annually in thoſe diſtricts, appears to have been derived.

With reſpect to the alderman, or chief magiſtrate of a ſhire, it has been diſputed whether

ther he was originally nominated by the king, or elected by the freemen of the territory over which he preſided. From what has been already obſerved, the latter of theſe opinions is much more probable than the former. Conſidering how little power was uſually poſſeſſed by the ſovereign in the infancy of government, not only among the Saxons, but in all the modern ſtates of Europe; and conſidering that he had neither the nomination of the borſholder, nor of the *centenarius*; it is not likely, that he would aſſume the appointment of thoſe who preſided over the greater diviſions of the kingdom.

It is univerſally admitted, that the Anglo-Saxon officers, who, in the early periods of the Heptarchy, received the appellation of *Heretochs*, were elected by the people whom they were appointed to command. Theſe Heretochs were the leaders of conſiderable bodies of the Saxons, who upon the ſettlement of their followers, became the governors of provinces; and of conſequence they were in reality the ſame ſort of magiſtrates with thoſe who, upon the more accurate diviſion of the country into ſhires, were better known by the name of

aldermen or earls. It is therefore highly probable, that the firſt aldermen were appointed in the ſame manner with their predeceſſors the Heretochs. By degrees, however, the chief magiſtrate of a ſhire was intruſted with the collection and management of ſeveral branches of the crown revenue within the bounds of his diſtrict; and for the execution of this part of his duty he became, of courſe, accountable to the king. This afforded the ſovereign a pretence for interfering in the appointment; and, from the effect which his interference could hardly fail to produce, appears to have given him a negative upon the election*. How long the aldermen were appointed in this manner, it is not eaſy to diſcover: but from the ſame circumſtances which had operated in the caſe of the tythingman, and of the hundreder; from the neceſſity of appointing the moſt opulent thane of a ſhire, who alone was able to command reſpect from

* In the reign of Alfred the earldoms were all held during the pleaſure of the king. Asser. de gest. Alfredi. In the reign of Edward the Confessor they had a third part of all fines, forfeitures, and other profits of the shire, for their labour. Brady's Compleat Hist. of England.

the

the inhabitants; and from the accumulation of property, and of intereſt, ariſing from the poſſeſſion of that high ſtation; the office was frequently continued in the ſame families; and was, in the end, annexed to them as a permanent dignity. We accordingly find, that, in the latter part of the Anglo-Saxon line, the aldermen, or earls, as they were then more commonly called, had in general become hereditary. In France it appears that the ſame change in the ſtate of the *counts* and *dukes* was, in like manner, completed before the acceſſion of Hugh Capet; which correſponds to the Engliſh period of the Norman conqueſt.

We may eaſily conceive that the hereditary governor of a ſhire, who had, in his own right, the privilege of aſſembling and commanding the forces, as well as of holding the chief tribunal for diſtributing juſtice, in that extenſive territory, was poſſeſſed of great influence and authority; and that many allodial proprietors would find they had no better means of ſecuring themſelves from inſult and depredation than by courting his protection. Even the leaders of hundreds, who had acquired a feudal ſuperiority over their own diſtricts, but who had

had been placed in a ſtation ſubordinate to the earl, were ſometimes induced, by motives of intereſt, to become his immediate vaſſals, and to promiſe the ſame ſervice and ſubmiſſion to him, which they exacted from their own military retainers. In particular tythings, more immediately ſituated within the ſphere of his influence, the powerful protection of the earl ſuperſeded that of their own tythingmen, and, by a natural conſequence, rendered the inhabitants more deſirous of yielding homage and fealty to that ſuperior magiſtrate, than to their own proper officers. In ſuch caſes the authority of the ſmaller magiſtrates was loſt and ſwallowed up in that of the greater.

The advancement of the earl gave occaſion to the appointment of an inferior officer, the *ſheriff*; upon whom was devolved the real buſineſs connected with the office. This officer was originally choſen by the free inhabitants, or allodial proprietors of the ſhire; though the extenſive department committed to his care, and the great privileges with which he was inveſted, had the ſame tendency, as in the caſe of the chief governors, to vary the mode of his appoint-

appointment, and, in the courſe of time, to beſtow upon him an independent authority.

It was in this manner that *allodial* was generally converted into *feudal* property, and that an enlarged ſyſtem of military dependencies was at length eſtabliſhed. The neceſſity of defence produced the primitive aſſociations of tythings, hundreds, and ſhires, compoſed of allodial proprietors, with their reſpective bondmen or vaſſals. But, from the diſorders of ſociety, theſe combinations were too looſe and feeble, to anſwer the purpoſes for which they were intended. To protect and reſcue the individuals in each of theſe communities, it was requiſite that their leader ſhould be inveſted with greater authority than had originally been beſtowed upon him; and that his aſſociates or followers ſhould become his permanent military ſervants. Tythings, hundreds, and even a conſiderable part of ſhires, were thus changed into fiefs; and the tythingman, the hundreder, and the earl, became the feudal ſuperiors over ſuch diſtricts as found it expedient to court their protection. A ſubordination, too, was introduced among the leaders

ers of thoſe diſtricts; and the tythingmen of a hundred became frequently the vaſſals of the hundreder; as many of the hundreders belonging to a ſhire became vaſſals of that greater baron, the earl.

As theſe changes were produced very ſlowly and gradually, it is not ſurpriſing that they ſhould be overlooked by cotemporary annaliſts. The meetings of the tything, the hundred, and the ſhire, appear to have retained the ſame names, and to have tranſacted the ſame ſort of buſineſs, long after the two former were entirely, and the laſt, in a great meaſure, converted into the courts of a barony. The alteration, in reality, conſiſted merely in a different ſhade of authority acquired by the leader or chief magiſtrate of thoſe diviſions.

It ſeems worthy of notice, that this converſion of allodial aſſociations into feudal dependencies, while it promoted the ariſtocracy, was calculated to improve the police of the country. When the tythingman, the hundreder, and the earl were exalted to the rank of hereditary barons, they were more capable than formerly of maintaining good order in their ſeveral diſtricts; and, as every feudal ſuperior

perior was reſponſible to the public for the conduct of his vaſſals and retainers, he had an intereſt to exert his authority in preventing rapine and violence. Unhappily, indeed, they were often too powerful to ſubmit to this part of their duty; and, inſtead of repairing the injuries done by their dependants, were frequently diſpoſed to ſcreen them from the puniſhment due to their offences.

CHAP.

CHAP. XI.

Changes produced in the Condition of the Vaſſals, and of the Peaſants.

THE members of every feudal dependency conſiſted of the military retainers or vaſſals, and of the peaſants, or churles; both of whom, in the latter part of the Anglo-Saxon government, experienced a great alteration in their circumſtances.

In that ſtate of ſociety which determined allodial proprietors to ſhelter themſelves under the protection of a feudal ſuperior, and by which the number of military retainers was therefore gradually augmented, the privileges belonging to this order of men were naturally increaſed; and their condition was rendered more ſecure and comfortable. The original vaſſals of any perſon were the members of his own family, who, from natural affection, and from ancient habits, were ſtrongly attached to his intereſt, and upon whom, from a reciprocal regard, as well as from the conſideration of expediency,

expediency, when they became too numerous to live in his own houſe, he voluntarily beſtowed the poſſeſſion of lands for their maintenance. As the ſuperior had no reaſon to ſuſpect that theſe men would ever be deficient in fidelity, or ſeek to withdraw their allegiance; ſo they entertained no apprehenſion that, while they were willing to fulfil their duty, they ſhould ever be diſpoſſeſſed of their lands. The intimate connexion between the parties, and the ſimplicity of their manners, made them place a mutual confidence in each other, and prevented their being apprehenſive of any future diſputes: ſo that neither the ſuperior required any ſpecification of the ſervices to be performed, nor the vaſſal, any expreſs ſtipulation, with reſpect to the duration or terms of his poſſeſſion. Thus the original vaſſals, though, in fact, their land was commonly permitted to remain with them and their poſterity, were properly no more than *tenants at will*, and therefore entirely dependent upon the ſuperior.

But when perſons originally independent, had, with a view to certain advantages, allowed themſelves to fall into a feudal ſubordination,

or

or had agreed to exalt an equal or a ſtranger to the rank of a ſuperior, it could hardly be expected that theſe new vaſſals would be willing to hold their lands in ſo precarious a manner. Cautious of yielding any greater ſubmiſſion than their circumſtances required, or ſuſpicious of neglect or oppreſſion from the perſon whom they had choſen for their protector, they naturally inſiſted, that the preciſe conditions of their tenure ſhould be expreſsly aſcertained; while the ſuperior, diſtruſting the fidelity and attachment of men over whom he had no natural authority, and who ſubmitted to him, perhaps, with reluctance, and from the mere preſſure of temporary difficulties, was no leſs anxious to ſpecify the nature of their ſervice, and to ſecure the performance of it, by ſubjecting them, in caſe of negligence or diſobedience, to ſevere penalties and forfeitures. From a variety of conjunctures, individuals might be laid under the neceſſity of ſubmitting to harder conditions, upon ſome occaſions than upon others; but, in general, when a feudal tenure was conſtituted by the conſent of any allodial proprietor, it ſeems to have been expreſsly provided, that the fief ſhould not only remain

remain with the vaſſal during life, but ſhould deſcend, either to his heirs male, or to ſuch o his heirs as were ſpecified in the grant.

By the eſtabliſhment of thoſe hereditary fiefs, the vaſſal, inſtead of being a precarious tenant, became, in effect, the proprietor of the feudal eſtate, and the intereſt of the ſuperior was reduced to a *reverſion* in default of the vaſſal's heirs, together with a right of levying, in particular caſes, a variety of perquiſites or caſual emoluments. Of theſe caſual emoluments or *incidents*, as they are called, which might ſtill accrue to the ſuperior from the eſtate of his vaſſal, after it was made tranſmiſſible to heirs, the feudal writers have commonly enumerated ſeven different ſorts.

1. Though fiefs had been rendered hereditary, yet, as every perſon who enjoyed them was liable for the feudal ſervices, it was neceſſary that an heir, before he obtained the inveſtiture, ſhould ſolemnly undertake the performance of them, and come under an oath of fidelity to the ſuperior. Upon the death of any vaſſal, therefore, the ſuperior laid hold of the lands, and detained them in his poſſeſſion, until the heir ſhould claim a renewal of the

feudal engagement. This privilege gave riſe to what is called the incident of *non-entry*.

2. When the feudal tenures were precarious, the ſons of the vaſſals frequently endeavoured, by a preſent, to procure the favour of the ſuperior, and to obtain the continuance of their anceſtor's poſſeſſion. Even after fiefs became hereditary, it ſtill was found expedient to ſecure, by means of a bribe, what, though a matter of right, was not eaſily extorted by force; and the original arbitrary dōnation was converted into a regular duty, under the name of *relief*.

3. If the heir of a former vaſſal was incapable of performing the feudal ſervice, he had no right to claim the poſſeſſion of the fief. While he was under age, therefore, the lands were poſſeſſed by the ſuperior; who, at the ſame time, from a regard to his own intereſt, if not from affection to the family of his old vaſſal, was induced to aſſume the guardianſhip and protection of the minor, his future military ſervant. Hence the complex burthen, and privilege, which went under the name of *wardſhip*.

4. During the diſorders which prevailed under

under the feudal governments, it was of great conſequence that the military vaſſals ſhould not contract an alliance with the enemy of their liege lord; which might have a tendency to corrupt their fidelity. When fiefs therefore were ſecured upon a permanent footing, a proviſion was made againſt an event of this dangerous nature; and the vaſſals who married without the ſuperior's conſent, or who even refuſed to marry according to his deſire, became liable to a pecuniary compoſition or penalty. Such was the incident of *marriage*; a perquiſite ſuited to the rude and barbarous manners which occaſioned its eſtabliſhment.

5. Beſide the ordinary revenue which the ſuperior drew from his eſtate, he was accuſtomed, upon extraordinary emergencies, to apply to his vaſſals, and to requeſt from them a contribution in order to relieve him from his immediate embarraſſment. While they held their lands precariouſly, a requeſt of this nature was equal to a command; ſince the ſuperior might at pleaſure ſeize upon the whole eſtate of his tenants. But when the vaſſals had obtained a more permanent right, it became neceſſary to ſettle the particular

occaſions upon which thoſe contributions were to be made, as well as the extent of the ſum that might be demanded; and in this manner, *aids* or *benevolences* came to be enumerated among the duties payable to a ſuperior. Three caſes are mentioned, in which, over all the feudal kingdoms, theſe contributions might be exacted; to redeem the ſuperior from captivity; to portion his eldeſt daughter, at her marriage; and to defray the expence of making his eldeſt ſon a knight.

6. Though a fief had been rendered hereditary; yet, upon the total failure of heirs, it neceſſarily returned to the ſuperior. The vaſſal might alſo forfeit his right to the lands, by his neglect to perform the feudal ſervice, or by any violation of his duty. This forfeiture, or termination of the fief, was called an *eſcheat*.

7. From the primitive ſtate of the feudal tenures, the vaſſal had no title to alienate his fief, which he poſſeſſed as the wages merely of his military ſervice. But when fiefs, by being tranſmiſſible to heirs, began to aſſume the appearance of property; when the general advancement of arts had rendered land more frequently an object of commerce; and when,

upon

upon the ſuppreſſion of the former diſorders, the military ſervice of the vaſſal was rendered of leſs importance, it became cuſtomary, by the payment of a ſum of money, to compound with the ſuperior for the privilege of ſelling the feudal eſtate. This produced the perquiſite of ſuperiority called the *fine of alienation.*

Theſe feudal incidents may be conſidered as the remains of that abſolute property of the fief, which the ſuperior had formerly enjoyed; but which, with reſervation of ſuch caſual emoluments, was now conveyed to the vaſſal.

After this new ſpecies of military retainers had become numerous, and had ſpread themſelves over the country, it is natural to ſuppoſe that their privileges would, by the force of example, be communicated to the ancient vaſſals. The ancient feudal tenants, who, from the more extended connections of the ſuperior, had probably become leſs the objects of his peculiar attention, and were not always treated with thoſe marks of diſtinction to which they ſuppoſed themſelves entitled, beheld with envy and jealouſy the ſtability and ſecurity enjoyed by his new vaſſals; and were ſolicitous to hold their lands under the ſame permanent tenure.

A conceſſion of this nature, by which the old and faithful followers of a chief were placed upon a footing of equality with ſtrangers, could ſeldom be decently withheld from them; and in caſes where he ſtood in immediate need of their aſſiſtance, was likely to be eaſily obtained. As theſe privileges were ſlowly and gradually introduced, and as they were often accelerated or retarded by the ſituation of particular baronies, not to mention a variety of accidental circumſtances, it is impoſſible to mark the preciſe period at which their eſtabliſhment was compleated; though it is probable that, before the Norman conqueſt, they were extended to the greater part, if not the whole, of the ancient vaſſals.

While the incidents due to the ſuperior were thus aſcertained with accuracy, the intereſt of the vaſſals made it no leſs neceſſary, that the extent and duration of their military ſervice ſhould be exactly determined. In Britain, and probably in ſeveral kingdoms upon the continent, it was limited accordingly to forty days for each year; a period that might appear fully ſufficient for thoſe deſultory enterprizes which the ſuperior had occaſion to undertake.

undertake. If ever he choſe, after the expiration of this period, to retain his vaſſals in the field, he was under the neceſſity of procuring their conſent, and was obliged to bear the charges of their maintenance.

The effect of theſe changes in the ſtate of the military tenures could not fail to be diſcernible in the adminiſtration and government of every feudal dependency. Though it ſtill was, no doubt, the intereſt of the vaſſals to avoid all contention with the ſuperior, and to merit his favour by their fidelity and alacrity in the diſcharge of their duty, yet they were not under the ſame neceſſity of paying an implicit obedience to his commands. To whatever inconveniencies they might be ſubjected from the manner of levying the feudal *incidents*, yet, while they punctually performed their ſervices, they could not, without groſs injuſtice, be deprived of their poſſeſſions; and they had a right to follow their own inclination in the management of their private concerns. Senſible of this alteration in their circumſtances, the ſuperior was induced to be more cautious of diſobliging them, to pay more deference to their opinions, to liſten and give

way to their remonſtrances, and, in public meaſures of importance, to act with their advice and concurrence. Thus, while the influence and power of the great lords was gradually extended by the multiplication of their vaſſals, their authority over each particular vaſſal was neceſſarily reduced; and they were obliged to exerciſe it with greater moderation, as well as to endeavour, by the arts of popularity, and even, ſometimes, by pecuniary rewards and advantages, to gain the effectual ſupport of their followers.

The improvements made in agriculture, produced alterations, of no leſs importance, in the ſtate of the peaſants or *churles*. The peaſants, as has been formerly obſerved, were originally bondmen or ſlaves. But as from the nature of their employment, and from their living at ſuch a diſtance as to be beyond the reach of the maſter's inſpection, it was found expedient to excite their induſtry by beſtowing upon them ſucceſſive gratuities and privileges; many of them were enabled, at an early period, to acquire conſiderable property; and ſome of them were advanced to the condition of tenants, intruſted by the maſter with a diſ-

a diſcretionary management of their farms. In the natural courſe of things, theſe tenants were afterwards raiſed to a ſtill better ſituation. When, in conſequence of ſome experience in huſbandry, they were about to undertake an expenſive melioration of their farms, common prudence required that they ſhould be ſecure of the poſſeſſion, for ſuch a period as might afford them a reaſonable proſpect of a return for their labour and expence. By offering an advanced rent to the maſter, they ſometimes prevailed upon him to make an agreement of that nature, and to grant them a *leaſe* for a certain number of years. From the improving circumſtances of the tenant, he ſometimes obtained, not only a right of holding the eſtate for life, but of tranſmitting it to heirs; and there appear to have been ſome occaſions, though it is probable theſe were not very common, on which, by the payment of a full price, he was enabled to make an entire purchaſe of the lands.

Thoſe churles who had acquired a landed eſtate tranſmiſſible to heirs, to be held for payment of a yearly rent, were denominated *ſoc-*

cage

cage vaſſals. From their employment and character, they were of an inferior rank to the military vaſſals; but they had the ſame permanent right to their eſtates. They were alſo liable to the ſame *incidents of ſuperiority*; excepting thoſe of *wardſhip* and *marriage*; the former, becauſe the ſuperior was diſpoſed to pay no attention to the education of ſuch of his dependants as were employed merely in agriculture; the latter, becauſe the alliances which they contracted were deemed of little conſequence to him.

The churles who made a full purchaſe of a landed eſtate ſhould have become allodial proprietors, and have acquired the rank and privileges of nobility; but the influence of ancient uſage prevented ſo ſudden and violent a change in the rank of individuals; and as the proprietor who ſold his lands, was unwilling entirely to reſign his dignity, ſo the purchaſer had not the preſumption to deprive him of it. To retain a faint ſhadow of the ancient connection, the latter became bound, as an acknowledgment of the ſuperiority, to pay to the former an eluſory annual duty, if ever it ſhould

ſhould be demanded*. We find that, by a ſtatute in the reign of king Athelſtan, a churle who had purchaſed an eſtate conſiſting of five hides of land, with certain appendages, uſually poſſeſſed by gentlemen of that fortune, was declared to have a right to all the *privileges of a thane*; by which thoſe of a *leſſer thane*, or military vaſſal, were probably underſtood†.

From this law, which demonſtrates that the encouragement of agriculture was become an object of public attention, it may be inferred, that though in ſome caſes the *churles* were enabled to acquire landed property, they had not been underſtood, upon that account, to obtain of courſe the privileges of the military people; ſince theſe were not conferred upon them without a ſpecial interpoſition of the legiſlature; nor even by that ſtatute, except upon ſuch as had accumulated a very conſiderable eſtate. Such was the original inferiority of the peaſants, and ſo ſtrong were the habits connected with their primitive condition, that

* This tenure has been frequently confounded with the ordinary ſoccage; but ſometimes is diſtinguiſhed by the name of *blanch*.

† Judicia civitatis Lundoniæ. Wilkins, Leg. Sax. p. 70.

though

though they had been raiſed to independent circumſtances, it was with ſome difficulty they were permitted to hold the rank of gentlemen, and procured the treatment ſuitable to men of that ſuperior claſs.

The freedom acquired by a great proportion of the peaſants, together with the advances in huſbandry from which it proceeded, gave riſe to an immediate improvement in arts and manufactures. The firſt artificers were villeins, or ſervants of the greater thanes; who happening to diſcover ſome ingenuity in the common mechanical arts, were employed by the maſter in thoſe branches of manufacture, which he found requiſite for his accommodation. The poſſeſſion of their farms, according to the rude manner in which agriculture was then practiſed, did not hinder them from exerciſing this collateral employment. When theſe people began to be emancipated from their ancient bondage, they were at liberty to work, not only for their former maſter, but for every perſon who choſe to employ them; and by working for hire, they drew a regular profit for their labour. A competition was then introduced among different workmen,

which

which contributed to promote their induſtry and ſkill; at the ſame time that the improvements which have been mentioned in the condition of the lower claſs of people, by increaſing their opulence, produced an increaſe of demand for the ordinary conveniencies of life; and therefore afforded greater encouragement to the occupations by which thoſe conveniencies were ſupplied. Particular branches of manufacture, or of labour, coming in this manner to be more in requeſt, occaſioned more conſtant employment to individuals; who, at length, found it their intereſt to abandon every other occupation, and to depend, for their livelihood, upon that ſingle branch in which they had attained a peculiar proficiency.

A variety of trades and mechanical profeſſions were thus introduced; and the artificers and labourers compoſed a ſeparate order of men in the community. As theſe grew up and were multiplied, they became the chief part of the inhabitants in thoſe villages where they reſided; which were gradually enlarged into towns, of more or leſs extent according as their ſituation, or other circumſtances, proved more favourable to manufactures.

It

It is unneceſſary to obſerve, that the ſeparation of trades and profeſſions, among the different inhabitants, occaſioned, of courſe, a degree of traffick or exchange of commodities. When the artiſans, as well as the farmers, confined themſelves to a ſingle employment, they were able, by their own labour, to produce only one ſort of commodity; and if they wanted any thing of a different ſort, they had commonly no other method of procuring it, than by an exchange with the perſon who had produced it. This exchange was at firſt limited, we may ſuppoſe, to the inhabitants of the ſame town or village; but, according as different places began to excel in manufacturing goods of different kinds, it was extended to neighbouring towns, or to the more diſtant parts of the country. Upon the opening of ſuch intercourſe between places at a diſtance, the inhabitants found it, in ſome caſes, inconvenient to go themſelves to purchaſe the goods which they wanted, and had occaſion therefore to employ ſome of their neighbours for that purpoſe; from which there aroſe, by degrees, a common *carrier*, upon whom this branch of buſineſs was frequently devolved. As this perſon acquired a little ſtock, he adventured

ventured ſometimes at his own riſk, to buy commodities in one place, with a view of ſelling them in another; and his employment was at length improved into that of a pedlar or travelling merchant.

Although theſe tradeſmen and mechanics were no longer in a ſervile condition, they had ſtill much dependence upon the original maſter, or feudal ſuperior, of that village or town in which they reſided. He defended them from the attacks of the military people around them; to which, from the turbulence and diſorder of the times, they were greatly expoſed; and which, from their unwarlike diſpoſitions, they were of themſelves but ill qualified to reſiſt. He alſo encouraged and promoted their trade, by permitting them to hold *fairs* and *markets*, or ſtated ſeaſons of rendezvous, between the merchants and cuſtomers of different places; by ſupplying them with warehouſes, and with meaſures and weights, for the ſale of their goods; and by ſuch other kinds of aſſiſtance as, from the rude ſtate of the country, and in the infancy of commerce, their circumſtances made them ſtand

ſtand in need of. In return for theſe advantages, he levied from them ſuch tolls and duties as they were able to bear; and of conſequence augmented his revenue in proportion to the increaſe of their wealth.

According as the patron and protector of theſe manufacturing and trading towns was poſſeſſed of greater influence and power, their trade was likely to be the more proſperous and flouriſhing. Some of thoſe towns, having ſprung from the peaſantry of the crown-demeſnes, were under the immediate patronage of the ſovereign; others, being ſituated upon the eſtates of the greater thanes, were under the protection of thoſe nobles. The former, it is evident, enjoyed a great ſuperiority over the latter. The protection of no particular nobleman could reach beyond the limits of his own eſtate; but that of the ſovereign extended, in ſome meaſure, over the whole of the kingdom: not to mention that the king, by reſiding occaſionally in the towns of which he was the immediate protector, and which he was naturally deſirous of encouraging, produced a reſort of the nobility and gentry to thoſe

thoſe places; and, by the expenſive living incident to a court, created an additional conſumption of their commodities.

The extent of the trade of England, before the Norman conqueſt, cannot, at this diſtance of time, be aſcertained with any degree of preciſion; but there is reaſon to believe that it was not very conſiderable. Of this we need require no farther evidence than the ſmall ſize of the principal towns in the reign of William the conqueror*. It appears, however, that, for more than a century before that period, the commerce and manufactures of the country had been making advances which attracted the notice of the legiſlature. By a law of king Athelſtan it is enacted, that a merchant who, upon his own account, had made three trading voyages to a foreign country, ſhould acquire the privileges of a thane†. Such extenſive trade, it was probably thought at that time,

* With regard to this point, see Doomsday-book—and Dr. Brady on Boroughs.

† Et si mercator tamen sit, qui ter trans altum mare "per facultates proprias abeat, ille postea jure thani sit dig-"nus."—[Judicia civitatis Lundoniæ. Wilkins, Leg. Sax. p. 71.]

could be attempted only by a perſon of uncommon ſpirit, and in affluent circumſtances; whoſe elevation, while it ſerved as an incitement to commercial enterprize, might be regarded as no diſparagement to the military people. In other ſtatutes which have been preſerved, of the ſame, and of ſubſequent princes, we meet with ſome of thoſe fundamental regulations, which commonly have place in every country, upon the firſt efforts to introduce a regular commerce; ſuch as the eſtabliſhment of certain formalities in completing mercantile tranſactions*; and the appointment of a mint in the principal towns†; together with that of a common ſtandard of money, and of weights or meaſures‡.

By the addition of artificers and tradeſmen to the different orders formerly mentioned, the whole people of England came now to be diſtinguiſhed into four great claſſes; which, from their differences in rank or employment, in characters and habits of living, were ſeparated and kept at a diſtance from one another.

* Wilkins, Leg. Sax. p. 80, 81.
† Ibid. p. 59.
‡ Ibid. p. 78.

Thoſe

Thoſe who exerciſed the honourable profeſſion of arms, whether in the ſtation of *greater* or *leſſer* thanes, of ſuperiors or vaſſals, thought it inconſiſtent with their dignity to engage in any lucrative occupation; and diſdained to contract alliances with farmers or manufacturers*. The two latter orders of men, though nearly of the ſame rank, were by their ſituation prevented from living together, and led to acquire very different manners, and ways of thinking. The ſolitary and robuſt employment of the farmer was not apt to form a ſimilar ſtyle of behaviour and accompliſhments to that which was produced by the ſedentary town-life of the manufacturer; and in a country where improvements had not been carried ſo far as to create an intimate correſpondence among all the members of ſociety, thoſe two ſets of men were not likely to exchange their profeſſions. The children of the

* After the Norman conquest, we find that the ſuperior lord was prohibited by ſtatute to marry his female ward to a *villain* or a *burgeſs*. It is probable that the rank of the two laſt-mentioned orders of men had riſen conſiderably, before this prohibition was thought neceſſary.

farmers, as well as thoſe of the tradeſmen and mechanics, were commonly diſpoſed to follow that way of life with which they had been early acquainted. They were even bred up in moſt caſes, to their father's employment, before they could well have an opportunity of comparing it with any other. Not only were thoſe two orders of men, in general, confined to their reſpective profeſſions, but the mechanics, employed in the ſeveral branches of manufacture, frequently tranſmitted their occupations to their poſterity; and continued them, for many generations, in the ſame families. The clergy, who formed a numerous and powerful body, were no leſs diſtinguiſhed from the other three claſſes, by their peculiar education, by their ſeparate views of intereſt, and by their profeſſional character and manners. The celibacy, indeed, of the clergy, which, however, was introduced in England after the period that we are examining, prevented this order of men from being ſo entirely ſeparated from the reſt of the inhabitants, as might otherwiſe have been expected. When churchmen were prohibited from having poſterity

of

of their own, it was neceſſary that their profeſſion ſhould be ſupplied from the other ranks of the ſociety.

From the natural courſe of things, it ſhould ſeem, that in every country where religion has had ſo much influence as to introduce a great body of eccleſiaſtics, the people, upon the firſt advances made in agriculture, and in manufactures, are uſually diſtributed into the ſame number of claſſes or orders. This diſtribution is, accordingly, to be found, not only in all the European nations, formed upon the ruins of the Roman empire; but in other ages, and in very diſtant parts of the globe. The ancient inhabitants of Egypt are ſaid to have been divided into the clergy, the military people, the huſbandmen, and the artificers; and theſe four deſcriptions of men were, by a public regulation, or more probably by the influence of cuſtom, derived from the early ſituation of the country, kept invariably diſtinct from one another. The eſtabliſhment of the four great *caſtes*, in the country of Indoſtan, is preciſely of the ſame nature. This diviſion of the people, which goes back into the remoteſt antiquity, has been aſcribed, by hiſtorians and po-

litical writers, to the poſitive inſtitution of Brama, the early, and perhaps fabulous legiſlator of that country; but, in all probability, it aroſe from the natural ſeparation of the principal profeſſions or employments in the ſtate; as it has been ſince retained by the exceſſive indolence, to which the inhabitants of thoſe warm and fertile regions are addicted, and which has hitherto checked their improvements, by producing an averſion to every ſpecies of innovation.

CHAP.

CHAP. XII.

The Influence of theſe Changes upon the Juriſdiction and Authority of the feudal Lords.

THE advancement of the Anglo-Saxon vaſſals and peaſants to greater ſecurity and freedom, and the ſeparation of the trading people from the claſs of huſbandmen, could not fail to limit the authority of the ſuperior, and more eſpecially to affect the ſtate of his juriſdiction. When his military retainers held their benefices precariouſly, and when the other members of his barony were either bondmen, or merely tenants at will, he found himſelf under no reſtraint, in deciding their differences, and in puniſhing their offences; but after the former had obtained hereditary fiefs, and a great proportion of the latter had been exalted to the rank of ſoccage-vaſſals, he was obliged to relax his claim to their obedience, and to diſtribute juſtice among them with greater moderation and circumſpection.

The retainers of every feudal ſuperior were

bound, not only to the performance of military or other ſervices, but alſo to aſſiſt him in maintaining good order and tranquillity within his barony; and therefore, when any of them complained of injuſtice from another, or was accuſed of a crime, the baron found it expedient, inſtead of deciding by virtue of his own authority, to call a number of his other vaſſals, and to proceed with their advice and concurrence in trying the cauſe. This expedient was the moſt equitable for the perſon concerned in the trial, as well as the beſt calculated for giving weight to the deciſion. The aſſeſſors of the judges were the *pares curiæ*, men of the ſame rank with one another, and with the parties; they were choſen occaſionally, and varied in each cauſe, to avoid burdening any individual more than his juſt proportion; and they were commonly ſelected from the neighbourhood of the place where the accuſation or diſpute had taken its riſe, that, from their own private knowledge, they might be enabled to form a better judgment of the facts in queſtion.

Thus the trial by an *inqueſt*, or *jury*, which had formerly taken place in the tribunals of the

the ſhire, and of the hundred, was introduced into thoſe of a feudal barony. The cauſes, however, of this inſtitution, in the former and in the latter, were ſomewhat different. A jury was found convenient, in the courts of the ſhire, and of the hundred, to ſuperſede the attendance of all their members; and might be regarded as a ſort of committee, in place of a full and regular meeting. In the courts of the baron, its interpoſitions became neceſſary, in place of the deciſions formerly given by the judge himſelf, in order to ſupply his deficience in authority over vaſſals whoſe fiefs had been ſecured to them by a permanent right. A jury was therefore an inſtitution leſs popular than that which had formerly obtained in the county or the hundred courts, but more ſo, than the mode of juriſdiction originally diſplayed in the courts of the baron. It is reaſonable, at the ſame time, to ſuppoſe, that, when allodial proprietors had been changed into vaſſals, the cuſtom of jury-trials in the courts of the former, would facilitate the introduction of a ſimilar practice in the judicial eſtabliſhments of the latter.

That this form of trial obtained univerſally in

in all the feudal governments, as well as in that of England, there can be no reaſon to doubt. In France, in Germany, and in other European countries, where we have any accounts of the conſtitution and procedure of the feudal courts, it appears that law-ſuits of every ſort, concerning the freemen or vaſſals of a barony, were determined by the *pares curiæ*; and that the judge took little more upon him, than to regulate the method of proceeding, or to declare the *verdict* of the jury.

The number of jurymen was originally varied in each cauſe, according as the opulence and power of the parties, or the magnitude of the diſpute, rendered it more or leſs difficult to enforce the deciſion. So little, after all, was the authority of the court, that, in many caſes, the party aggrieved by the verdict aſſumed the privilege of challenging the jurymen to ſingle combat*. From the progreſs of regular government, and in conſequence of the diſpoſition among mankind to be governed by general rules, a certain number of jurymen became cuſtomary in ordinary

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cauſes;

uſes; and at laſt was univerſally eſtabliſhed. From accidental circumſtances, of little importance, a different number has been eſtabliſhed in different countries; as that of twelve in England and fifteen in Scotland.

With reſpect to the time when trials by jury were firſt introduced into the court of every feudal barony, we are left in the ſame obſcurity, as concerning their previous introduction among the allodial proprietors, in the courts of the hundred and of the county. But conſidering the circumſtances from which the ſuperior was induced to adopt this mode of procedure, there is ground to believe that it aroſe upon the eſtabliſhment of hereditary fiefs, and became gradually more univerſal, according as the number of the feudal tenants, who had obtained a perpetual right to their poſſeſſions, was increaſed.

In this view, it ſeems probable that the practice of juries, in the baron-courts, was not very common in England till near the end of the Anglo-Saxon government. In the opinion of ſome antiquaries, the firſt veſtige of a jury-trial, in the Engliſh hiſtory, is poſterior to the Norman invaſion; a miſtake which

which appears to have ariſen from the ſuppoſition, that before this period hereditary fiefs were unknown in England.

Though the fact ſeems now to be admitted, that jury-trials were eſtabliſhed in the baron courts of every feudal kingdom, yet the origin of that inſtitution has been the ſubject of much doubt and controverſy. Some authors have thought that jurymen were originally *compurgators*, called by a defendant, to ſwear that they believed him innocent of the facts with which he was charged. In the church courts, a perſon accuſed of a crime was underſtood to be guilty, unleſs he could clear himſelf by what was called the *oath of purgation*; and in ſome caſes, unleſs his own oath was confirmed by that of a number of other perſons acquainted with his behaviour. The injuſtice of this general preſumption of *guilt*, the very oppoſite of what ſhould be entertained in every court of juſtice, was the leſs obſervable, as the conſequence of it was merely to draw upon the guilty perſon a ſpiritual admonition, or cenſure, for the good of his ſoul. From the influence of eccleſiaſtical procedure, the ſame rule, however, was afterwards

wards adopted in the temporal courts; where it came to be much more oppreſſive.

But the province of *compurgators*, in thoſe courts, and that of *jurymen*, were ſo totally different, as to make it ſcarcely poſſible to conceive that the latter could ariſe out of the former. Compurgators were merely witneſſes; jurymen were, in reality, judges. The former were called to confirm the oath of the party, by ſwearing, according to their belief, that he had told the truth: the latter were appointed to try, by witneſſes, and by all other means of proof, whether he was innocent or guilty. Compurgators, for this reaſon, were called by the party himſelf: the jury, on the contrary, were named by the magiſtrate.

In conſequence of the different departments, occupied by theſe two deſcriptions of men, it ſhould ſeem that, in moſt of the feudal governments, they exiſted at one and the ſame time; and that juries were accuſtomed to aſcertain the truth of facts, by the defendant's oath of purgation, together with that of his compurgators. We can have no doubt that this was formerly the practice; ſince it is even

even at preſent, retained by the Engliſh, in what is called the *wager of law*.

There are two particulars in which we diſcover a reſemblance between the procedure of compurgators and of jurymen; whence, in all probability, the opinion abovementioned has ariſen. Both of them were obliged to ſwear, that they would *tell the truth*; and both were ſubjected to confinement until they had given their declaration. But theſe regulations concerning jurymen afford no proof that they were ever conſidered in the light of compurgators. According to the ſimple idea of our forefathers, guilt or innocence was regarded as a mere matter of fact; and it was thought, that no man, who knew the real circumſtances of a caſe, could be at a loſs to determine whether the culprit ought to be condemned or acquitted. It was, at the ſame time, ſuſpected, that individuals drawn occaſionally from the common maſs of the people, to give judgment in a law-ſuit, might be expoſed to improper influence; for which reaſon precautions were taken to prevent their having the leaſt intercourſe with the parties or their connexions.

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As to the unanimity required in the Engliſh juries, a circumſtance in which they agree with the ancient compurgators, it has not been univerſally eſtabliſhed in the feudal governments. Preſident Monteſquieu, at the ſame time, accounts for it, from a point of honour obſerved by the *pares curiæ* in their judicial deciſions, that they ſhould agree with one another in pronouncing a verdict; becauſe they were obliged to fight either of the parties who might give them the lie.

The ſame form of procedure which took place in the adminiſtration of juſtice, among the vaſſals of a barony, was gradually extended to the courts held in the trading towns. Notwithſtanding the freedom acquired by the mercantile people, they ſtill ſubmitted to the juriſdiction of that perſon to whom they were indebted for protection, and were reduced by him under a ſyſtem of government, ſimilar to that which he eſtabliſhed among his vaſſals. In as much as they held lands, for which they paid him a certain rent, they were in reality a ſpecies of feudal tenants.

The ancient juriſdiction of the greater thanes, or feudal ſuperiors, came thus to be exerciſed

exerciſed in two different courts. The one, in which cauſes were determined with the aſſiſtance of a jury, took cognizance of the military and ſoccage vaſſals, together with the inhabitants of the trading towns, under the protection of the ſuperior. The other, which proceeded without that formality, was held for the trial of ſuch members of the barony as were ſtill in a ſtate of greater dependence. The former is that which, according to ſome authors, was properly called the *court-leet*; being the court of the Liti, or free people. The latter, in which the ſuperior retained his ancient authority, received by way of diſtinction, it is ſaid, the general appellation of the *court-baron**.

It is worthy of notice, that the king, conſidered as a feudal ſuperior, was in the ſame circumſtances with the greater thanes; and that, by the gradual multiplication of his vaſſals, his authority over them underwent a

* Bacon's diſcourſe on the government of England, collected from the MS. notes of Mr. Selden, chap. 33. Alſo The Mirror.

"Liti ac Litones idem ac Laſſi et Liberti cenſentur." Muratori Ant. Med. Ævi. tom. i. diſſert. 15.

ſimilar

ſimilar limitation. The ſame regulations, therefore, concerning the diſtribution of juſtice by the intervention of juries, with the ſame diſtinction in this reſpect between his vaſſals and bondmen, were introduced into the baron courts of the king, as into thoſe of the nobility, or ſuch of his ſubjects as retained their allodial property.

The improvements which I have mentioned, in the ſtate of the feudal courts, could not fail to produce a more equal and impartial diſtribution of juſtice; and this circumſtance, together with the general advancement of civil ſociety, contributed to increaſe the buſineſs of thoſe tribunals. From the greater diffuſion of property among the people of inferior condition, law-ſuits became ſomewhat more numerous; and from their being frequently decided by men of the ſame rank with the parties, were likely to procure a fuller and more deliberate hearing. As the exerciſe of juriſdiction was thus rendered more tedious and burdenſome, the great lords, as well as the king, who had been accuſtomed to preſide in the trial both of civil and criminal cauſes, within their ſeveral baronies, were leſs

 diſpoſed

diſpoſed to give the neceſſary attendance; and by appointing deputy judges, endeavoured to relieve themſelves from a great part of the labour. The ſame circumſtances which gave riſe to theſe inferior officers, contributed afterwards to enlarge their powers; and from the negligence of their conſtituents, who ſeldom interfered in controuling their deciſions, and at laſt intirely abandoned the employment of judging, they became the ordinary magiſtrates in the ſeveral demeſnes or territories committed to their direction.

The transference of juriſdiction, from the primitive judges to their deputies, laid a foundation for one of the moſt important alterations in the ſyſtem of judicial policy. The *executive* and *judiciary* powers, with which every feudal baron was originally inveſted, were in this manner ſeparated from each other; and the exerciſe of the latter became the ſole occupation of particular perſons; who, upon that account, were likely to give greater application, as well as to acquire more experience and knowledge in the determination of law-ſuits. The judges of a barony, though nominated by the baron, had neceſſarily their own

own views of right and wrong; and having a character to ſupport, might be ſuppoſed, in ſome caſes, to conduct themſelves without regard to the intereſt of their conſtituents. It happened likewiſe from the natural courſe of things, that as the moſt opulent vaſſals were found the beſt qualified for maintaining the dignity of a judge, the ſame perſons were frequently enabled to ſecure the office during life, and even ſometimes to render it hereditary. In either caſe the judge became in a great meaſure independent of the feudal lord from whom his authority had been derived. It muſt be acknowledged, however, that long after the period which we are now examining, the king's judges continued under a precarious appointment.

A diſtinguiſhed political author has pointed out the ſeparation of the judicial power from the king's prerogative, as one of the great ſources of the liberty enjoyed by the ſubjects of Britain. To thoſe who ſpeculate upon the conduct of human affairs, it is amuſing to diſcover, that this important regulation was neither introduced from any foreſight of its beneficial conſequences, nor extorted from the

monarch by any party that were jealous of his power; but was merely the ſuggeſtion of indolence, and was adopted by the king, in common with other feudal ſuperiors, to relieve them from a degree of labour and attention which they did not chuſe to beſtow. It was, in reality, a conſequence of the general progreſs of ſociety, by which employments of every ſort, both liberal and mechanical, have been diſtributed among different individuals, and have become the object of ſeparate profeſſions and trades.

As ſoon as the buſineſs of a judge became the ſole employment of particular perſons, it was neceſſary that they ſhould obtain a maintenance in return for their labour. This was acquired without any difficulty, from the very exerciſe of their profeſſion; as the ſuperior by whom they were appointed, empowered them to exact a fee or perquiſite from every party whoſe cauſe they had occaſion to determine. Theſe exactions, which came to be fixed, in every ſtep of judicial procedure, according to the degree of trouble it was underſtood to produce, were not only ſufficient for maintaining the judge, but afforded alſo an emolument to

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the ſuperior, who demanded from his deputy a ſtrict account of the fees he had levied. To prevent any embezzlement in this reſpect, a clerk was appointed to ſit in court along with the judge, and to keep a record of judicial proceedings. Such was probably the firſt intention, not only in England, but in all the feudal countries, of recording the deciſions of a judge; though the practice was afterwards made ſubſervient to other purpoſes of the higheſt utility.

Of the fees, or perquiſites, drawn by the judges under the appointment of the crown, the ſovereign acquired a conſiderable proportion, which formed an additional branch of the public revenue.

From this method of maintaining judges, they had obviouſly an intereſt to increaſe their perquiſites by encouraging law-ſuits, and multiplying the forms of judicial procedure. Hence there occurred a new reaſon for the interpoſition of juries in the court of a barony; that they might prevent the unreaſonable delay of juſtice. It may, at the ſame time, perhaps be admitted, that the intereſted activity and vigilance of the magiſtrate was, in that

early and rude age, more beneficial in preventing diſorder and violence, than it was hurtful, either by promoting litigiouſneſs, or by introducing tedious and abſurd formalities into the ſyſtem of judicial diſcuſſion.

CHAP.

CHAP. XIII.

Of Eccleſiaſtical Courts.

WHILE the nobles were gradually extending their power, and reducing that of the ſovereign, the eccleſiaſtical order was advancing, with haſty ſtrides, to the eſtabliſhment of an authority independent of either. The barbariſm and ſuperſtition that ſucceeded the downfal of the Roman empire, and the ſyſtem of eccleſiaſtical government erected in the weſtern part of Europe, had a uniform tendency, as has been already obſerved, to increaſe the wealth and influence of the church. Were we to conſider merely the progreſs of ſuperſtition, we ſhould expect that the uſurpations of the clergy would be moſt rapid in thoſe European countries, which were at the greateſt diſtance from the incitements to cultivation, and in which the ignorance and ſimplicity of the inhabitants diſpoſed them to follow more implicitly the direction of their ſpiritual guides. But the fact was other-

wife. The kingdoms in the neighbourhood of the pope's reſidence, and of his temporal dominions, were nearer the center of that artful policy, which by taking advantage of conjunctures, exalted no leſs the power and privileges of the church than the dignity and authority of her leader. Thus the right of levying the *tythes*, that enormous impoſition for the ſupport of the clergy, and which marks the prodigious extent of eccleſiaſtical influence, was introduced in France, and over a great part of Italy, as early at leaſt as the time of Charlemagne; which correſponds to that of Egbert among the Anglo-Saxons; and the ſame tax was afterwards extended, by degrees, to the other countries of Europe. It appears to have been finally eſtabliſhed in England, during the reigns of Alfred and of Athelſtan; patriotic princes, who, doubtleſs, found themſelves under the neceſſity of giving way to the current of the times, by ſubmitting to ſuch an oppreſſive exaction.

The increaſing opulence of the clergy, as it was an effect of the blind zeal, and the general debaſement of the people, ſo it was accompanied by a correſponding perverſion of religious

religious opinions, and by an increaſe of ſuperſtitious obſervances. The real virtues of ſociety, whoſe intrinſic value recommends them to our obſervance, and which frequently appear to coſt us nothing, came to be little eſteemed, in compariſon of penances and mortifications; from which nature is diſpoſed to ſhrink; and which are ſubmitted to, for no other purpoſe, but that of appeaſing the wrath of an offended deity. Theſe laſt were accounted highly meritorious in perſons of every deſcription; but were thought more eſpecially ſuitable to the profeſſion and character of churchmen; upon whom it was incumbent to ſet an example to others. The monks, in particular, who, by their original inſtitution, had no other means of diſtinction, were incited to procure admiration by the auſterity of their lives, and by the ſevere and painful diſcipline which they underwent. As they advanced in reputation and popularity, they acquired more numerous and wealthy eſtabliſhments; their influence in religious matters became proportionably extenſive; and they not only roſe to great conſideration in the government of the church, but frequently, too, interfered

interfered in that of the ſtate. From the continent of Europe, the ſame practices, and ways of thinking, were communicated to Britain; where, about the middle of the tenth century, we find St. Dunſtan, at the head of the regular clergy, poſſeſſed of ſuch power and credit, as enabled him to controul the adminiſtration of government, and even to diſpoſe of the crown.

Among the ſeveral branches of mortification impoſed by the monaſtic rules, that of celibacy, or a total abſtinence from the intercourſe of the ſexes, was deemed the moſt important; whether on account of the difficulties which muſt be ſurmounted in counteracting the moſt violent propenſities of nature; or on account of that variation of temperature in the human frame, which, however irreſiſtible thoſe propenſities may be at certain ſeaſons, yet, on other occaſions, renders the indulgence, or even the expreſſion of them, an object of averſion and diſguſt. This, therefore, became now the uſual topic of declamation to the Engliſh monks; who, finding the ſecular clergy to be their great rivals in the public eſteem, and being impatient of that ſuperior authority which they poſſeſſed, inveighed

veighed againſt their married life, as inconſiſtent with the purity of a chriſtian paſtor; repreſenting their wives in the light of concubines or proſtitutes, and their children as baſtards. Though the doctrine inculcated by theſe fanatical zealots was not carried into execution until a ſubſequent period, it appears, even at this time, to have been approved and ſupported by the general voice of the people.

From the ſituation of the Chriſtian clergy, and from the influence and authority which they enjoyed, they were led early to aſſume the cognizance of judicial buſineſs, and to form a number of tribunals for the exerciſe of their juriſdiction. Even before the time of Conſtantine, when they received no protection or countenance from the civil government, they were accuſtomed to enquire into the faith and manners of chriſtians, and, after repeated admonitions, to *excommunicate* thoſe individuals who perſiſted in opinions, or practices, which the church had condemned. This juriſdiction was at firſt exerciſed by the clergyman, together with the moſt reſpectable among the laity, of each particular church; but when the zeal of the latter, from the greater extenſion

ſion of the goſpel, had begun to ſlacken, they became weary of interfering in ſuch matters; and as they gradually loſt their privilege by diſuſe, the buſineſs remained entirely in the hands of the former. When a number of churches were afterwards united in one dioceſe, the clergy of that latter diſtrict, under the authority of the biſhop, exerciſed a juriſdiction of a like nature over the whole of the inhabitants. In the meetings that were called, however, for this purpoſe, after the introduction of wealth had produced very different degrees of rank among churchmen, the parochial, or inferior clergy, were by degrees overlooked, or endeavoured to excuſe themſelves from attendance; and the care of maintaining eccleſiaſtical diſcipline, throughout the dioceſe, was appropriated to the biſhop and clergy of his cathedral church. This dioceſan court, which, from a perfect uniformity of circumſtances, was formed upon the ſame plan in every dioceſe of the kingdom, was every where liable to the review of a ſimilar court, in a ſtill more extenſive diſtrict, convened by the archbiſhop; and from the decrees of this laſt, at a period when the papal authority had arrived

arrived at its height, there lay an appeal to the Roman pontiff.

Together with this judicial authority, which was properly of a ſpiritual nature, the chriſtian clergy came alſo to be inveſted with a temporal juriſdiction. After the chriſtian religion was taken under the protection of the Roman government, and after the faſhion of making donations to the church, for pious uſes, had become prevalent, the dignified clergy, both ſecular and regular, as has been formerly mentioned, were enabled to acquire great landed eſtates. Theſe, upon the ſettlement of the Gothic nations in the weſtern part of Europe, were gradually reduced under the ſame feudal policy that obtained in the landed property of the lay-barons; and a great proportion of the lands of every biſhop, or abbot, was commonly diſtributed among his villeins or vaſſals; over whom he exerciſed the juriſdiction and authority of a temporal lord and ſuperior. The eſtate, or benefice, which from the piety of well-diſpoſed perſons, or from whatever cauſe, had been mortified to the church, and had come into the hands of ſome particular church-

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man, was afterwards, in like manner as happened to the other fiefs of the kingdom, increaſed by the voluntary ſubmiſſion of neighbouring ſmall proprietors; who, in order to purchaſe his protection, reſigned their allodial property, and became his vaſſals. As the dignified eccleſiaſtics were not only poſſeſſed of a degree of influence correſponding to the extent of their benefices, but were ſupported by the ſpiritual arm of the church, they were often better qualified than many of the nobles, to ſecure their dependants from oppreſſion; and of conſequence the opportunities of augmenting their wealth, by an artful interpoſition in behalf of the inferior people, were proportionably more frequent.

In thoſe circumſtances, a biſhop came to be inveſted with a civil as well as an eccleſiaſtical juriſdiction; the one extending to the people who lived upon his own eſtate; the other to all the inhabitants of his dioceſe. By virtue of the former, he puniſhed the crimes, and determined the pecuniary differences of his tenants and vaſſals. In conſequence of the latter, he enquired into the opinions and behaviour

haviour of ſuch as were under his direction in religious matters; and cenſured them, either for hereſy or immorality.

It required no great penetration to diſcover, that this temporal juriſdiction of the biſhop might be extended, under cover of the ſpiritual juriſdiction. Every crime; every tranſgreſſion of a rule of juſtice, whether of a public or private nature, may be conſidered as a ſin, or as an offence in the ſight of God; and in that view it might, conſiſtently with the ſyſtem of church-diſcipline, become an object of eccleſiaſtical cenſure. Whatever, therefore, could be the ground of an action before the civil magiſtrate, might be brought, at the ſame time, under the cognizance of the ſpiritual judge. The profeſſed purpoſe of the former was, indeed, very different from that of the latter, who pretended to act merely with the view of promoting the good of the party in a future world. But when the church had acquired great authority over the people, it was not difficult for the eccleſiaſtical judge to frame his ſentences in ſuch a manner as to affect alſo the intereſt of men in the preſent life. In making atonement for a ſin, the

offender

offender might be ordained to indemnify the injured perſon, or even to ſubmit to a public puniſhment.

This extenſion of eccleſiaſtical juriſdiction was made with greater or leſs rapidity, in different parts of Chriſtendom, and with regard to perſons or cauſes of different deſcriptions. It began with regard to the clergy themſelves.

To maintain the dignity and credit of the church, it was neceſſary that ſhe ſhould pay the utmoſt attention to the behaviour of her own members, and be careful to avoid ſcandal, by cenſuring their offences with impartiality and rigour. She found, at the ſame time, the leaſt difficulty in compelling churchmen to obey her decrees; for, as ſoon as the Chriſtian Church had come to be eſtabliſhed by law, the excommunication of a clergyman muſt have inferred a forfeiture of his benefice; ſince a perſon, who had been caſt out of the ſociety of chriſtians, could not conſiſtently be permitted to hold any eccleſiaſtical dignity or employment. From the ſevere diſcipline, which the church exerciſed over her own members, it became cuſtomary to exhibit complaints

plaints againſt them before the eccleſiaſtical, rather than before the civil judge, and to proſecute them in the church court, either for private debts, or for public offences.

After this practice had become general, it was regarded by churchmen as a matter of privilege. The peculiar functions and character of a clergyman required a peculiar delicacy, it was pretended, in judging of his conduct, which could not with propriety fall under the cognizance of the civil magiſtrate, and of which the clergy themſelves were the only competent judges. In the progreſs of church power, this exemption from the juriſdiction of temporal courts was gradually eſtabliſhed through the greater part of Chriſtendom. It was introduced in the dioceſe of Rome by a law of Alaric, which provided that the clergy of that diſtrict ſhould only be proſecuted, in the firſt inſtance, before their own biſhop; but from his deciſion an appeal was admitted to the civil magiſtrate. In the Eaſtern empire, the inferior clergy obtained a ſimilar privilege, in civil action, by a law of the emperor Juſtinian; though, in criminal cauſes, not properly eccleſiaſtical,

they might ſtill be proſecuted either in the ſpiritual or temporal court. The higher orders of churchmen, however, together with nuns, were, by the regulation of this emperor, permitted, in all caſes, to decline the juriſdiction of laic judges

When the exemption of the clergy from the juriſdiction of the civil magiſtrate, which, with the exception of a few cauſes, became univerſal in the Weſtern part of Europe, had been completely eſtabliſhed, the church was, in reality, independent of the ſtate; ſince, whatever regulations were enacted by the legiſlature of any country, they might, with ſafety, be diſregarded by churchmen, who could not be puniſhed for the violation of any law, unleſs they thought proper to enforce it by their own courts †.

The power of the church, in the adminiſtration of juſtice to her own members, was followed by a ſimilar juriſdiction over the laity, in thoſe law-ſuits by which her own

* V. Nov. 83.—123.—79. Also Gianone, Hiſt. of Naples.

† There were certain great crimes, such as high treason, a sacrilege, to which this exemption did not extend.

intereſt

intereſt might, in any degree, be affected, or which appeared, however indirectly, to have an influence upon any eccleſiaſtical matter. But, in England, this encroachment upon the province of the civil magiſtrate was poſterior to the Norman conqueſt: and therefore does not fall under our preſent conſideration. During the government of the Anglo-Saxon princes, the clergy did not claim a ſeparate cognizance in the temporal cauſes of the laity; but they laid the foundation of ſuch a claim, in a future period, by aſſuming a privilege of aſſiſting the ordinary magiſtrates in the determination of ſuch cauſes. The extent of a dioceſe being the ſame with that of a ſhire, the biſhop ſat along with the earl or ſheriff, as a judge, in the county courts; and the rural dean, whoſe eccleſiaſtical diſtrict coincided with the hundred, appears, in like manner, to have been aſſociated with the *centenarius*, in the determination of ſuch differences as aroſe among the people of that diviſion. It is not improbable that the union of the civil and eccleſiaſtical powers was carried ſtill lower, and that the parſon of a pariſh was accuſtomed to judge along with the tythingman, in the

court of the decennary: this is what might be expected from the correſpondence between the limits of a pariſh and a tything, and from the analogous practice in the ſuperior courts; though the accounts tranſmitted by early hiſtorians are too vague and general to afford any poſitive evidence of the fact.

This arrangement of the Saxon tribunals was a natural conſequence of the influence poſſeſſed by the ſpiritual and the temporal governors, in the territories over which they preſided. It ſeems, at the ſame time, to have been eſteemed a wiſe regulation; in as much as by uniting the opinion of thoſe two officers, in the diſtribution of juſtice, it was likely that the deciſions would be tempered in ſuch a manner, as might correſpond to the intereſt, and the views, of every ſet of men in the community. The experience and foreſight of that age was too limited to diſcover the inconveniency of confounding the plain and accurate rules of juſtice, with the intricate ſubtleties of caſuiſtry, which naturally introduce themſelves into the judgments of a ſpiritual director: not to mention the danger of committing a ſhare of the judicial power, in thoſe times

times of ignorance, to a ſet of men, who, by their ſuperior education, were likely to be an over-match for the civil magiſtrate, and who, by their ſituation, having acquired a ſeparate intereſt, were led to ſeek their own aggrandizement at the expence of the great body of the people.

CHAP. XIV.

Alterations in the State of the Wittenagemote.

THE progreſſive changes in the ſtate of property, and in the conſtitution and circumſtances of the people, of which an account has been given, muſt have contributed, in many particulars, to alter the conſtitution and procedure of the Wittenagemote. As this national counſel was compoſed of all the allodial proprietors of land, whoſe eſtates, according to the primitive diſtribution of property, were generally of ſmall extent, there can be no doubt that, upon the union of the different kingdoms of the Heptarchy, it formed a very numerous, and, in ſome degree, a tumultuary meeting. The meaſures which came under its deliberation were propoſed, it ſhould ſeem, by ſuch of its members as were diſtinguiſhed by their influence or abilities; and its determinations were ſignified, not by collecting exactly the number of ſuffrages, but by a promiſcuous acclamation, in which the by-ſtanders,

by-ſtanders, it is not unlikely, were accuſtomed frequently to join with thoſe who had the right of voting. This, in all probability, is what is meant by the early hiſtorians, when they ſpeak of the *people* being preſent in the ancient Wittenagemote, and of their *aſſiſting*, and *giving their conſent*, in forming the reſolutions of that aſſembly.

It cannot eſcape obſervation, that this early conſtitution of the national council, while it contained a mixture of democracy and ariſtocracy, was, in ſome reſpects, favourable alſo to the intereſts of the crown. In ſo numerous and diſorderly an aſſembly, there was great room for addreſs, in managing parties, and in conducting the ſubjects of public deliberation; ſo that the king, the chief executive officer, had many opportunities of promoting the ſucceſs of a favourite plan, as well as of parrying, and removing out of ſight, thoſe meaſures which were diſagreeable to him.

The frequent reſignations of land which, during the progreſs of the Saxon government, were made by the ſmall allodial proprietors, in order to ſhelter themſelves under the protection of a feudal ſuperior, neceſſarily withdrew thoſe

individuals from the Wittenagemote; and reduced them under the juriſdiction and authority of that particular thane whom they had choſen for their protector. As they became his military ſervants, they were bound, on every occaſion, to eſpouſe his quarrel, and to follow his banner. They were bound, at the ſame time, to attend his baron-court, and to aſſiſt in deciding cauſes, as well as in making regulations, with regard to his vaſſals. In conſiſtency with that ſubordinate ſtation, they could not be permitted to ſit in the ſame council with their liege lord, to deliberate with him upon public affairs; but, on the contrary, were underſtood to be repreſented in the Wittenagemote by the perſon who had undertaken to protect them, and to whom they owed ſubmiſſion and obedience.

Thus, according as the vaſſals of the nobility, throughout the kingdom, were multiplied, the conſtituent members of the Wittenagemote became leſs numerous; and the right of ſitting in that aſſembly was more and more limited, to a few opulent barons, who had acquired the property of extenſive diſtricts, and

and reduced the inhabitants under their dominion.

This change of circumſtances was no leſs unfavourable to the king, on the one hand, than it was, on the other, to the great body of the people. For although the vaſſals of the crown were, by the gradual reſignations of allodial property, increaſed in the ſame, or even in a greater proportion than thoſe of particular noblemen, the ſovereign was not thence enabled to preſerve his former weight in the determination of public meaſures. The more the national council had been reduced to a ſmall junto of nobles, it was the more difficult to impoſe upon them, or by any ſtratagem to divert them from proſecuting their own views of intereſt or ambition. By the accidental combination of different leaders, they ſometimes collected a force which nothing could reſiſt; and were in a condition, not only to defend their own privileges, but even to invade the prerogative. It was often vain for the ſovereign, in ſuch a ſituation, to appeal to the ſword from the deciſions of the Wittenagemote. Thoſe haughty and ambitious ſubjects were generally prepared for ſuch

ſuch a determination; and, as they came into the aſſembly, ſupported by their vaſſals, armed and ready to take the field, they got frequently the ſtart of his majeſty. To give way, therefore, to their demands, and to wait for ſome future opportunity of recovering what had been yielded, was in many caſes unavoidable.

In that early period of the Anglo-Saxon ſtate, when the allodial proprietors were numerous, and when their eſtates were generally ſmall, they were underſtood to be all of the ſame rank and condition. Although ſome perſons might be diſtinguiſhed above others, by their abilities, or military reputation, the ſuperiority derived from thence, being accidental and temporary, was not productive of any permanent authority or privileges. But when, from the cauſes which have been mentioned, a few great lords had become maſters of an extenſive landed property, their exaltation in power and dignity was a neceſſary conſequence. Thoſe individuals, on the contrary, who remained in the poſſeſſion of ſmall eſtates, though by any fortunate concurrence of events they had been enabled to retain their independence, were degraded in proportion to their

their poverty. They could maintain but few retainers to ſupport their influence. Hardly in a condition to defend themſelves, and afraid of every conteſt which might endanger their property, and their perſonal ſafety, they were deterred from claiming political conſideration, and from interfering in public buſineſs. It was their intereſt to live upon good terms with their neighbours, and, by their peaceable and inoffenſive behaviour, to ſhun every ground of jealouſy and reſentment. If they came into the Wittenagemote, their voice was but little heard, or if they ventured to differ from others, of greater opulence, it was likely to be treated with neglect, or with deriſion. They had but ſmall encouragement, therefore, to attend the meetings of that aſſembly; where, at the ſame time that they incurred an expence not ſuited to their fortunes, they were ſubjected to continual mortification, and were incapable of procuring reſpect. In theſe circumſtances, it is probable that the allodial proprietors, whoſe eſtates were inconſiderable, appeared but ſeldom in the Wittenagemote; and that, unleſs upon extraordinary occaſions, when great unanimity was of the higheſt importance, their

their abſence was either diſpenſed with, or in a great meaſure overlooked.

It was to be expected that this very unequal diſtribution of property, as it produced a real difference in the conſideration and importance of individuals, would come at length to be accompanied with correſponding marks of diſtinction; and that ſo much wealth as enabled the poſſeſſor to live according to a certain ſtandard of magnificence, might become the foundation of ſuitable dignity. Thus, in the latter part of the Anglo-Saxon government, ſuch of the nobles as enjoyed an eſtate, extending to forty hides of land, were diſtinguiſhed in rank and condition from thoſe who poſſeſſed an inferior property. This appears from a paſſage in the regiſter of Ely, in which mention is made of a perſon who, "though he "was a *nobleman*, could not be numbered "among the *proceres*, becauſe his eſtate did not "amount to forty hides of land*."

* Habuit enim (ſpeaking of the abbot of Ely) fratrem *Gudmundum* vocabulo, cui filiam præpotentis viri in matrimonium conjungi paraverat. Sed quoniam ille quadraginta *hidarum* terræ dominium minime obtineret, licet *nobilis* esset, inter *proceres* tunc numerari non potuit; eum puella repudiavit. Historia Eliensis, lib. ii. cap. 40.

From

From this paſſage, political writers have been led to advance two conjectures, to which it gives no countenance whatever. They conſider the rank or privileges, attached to the poſſeſſion of forty hides of land, as having exiſted from the original ſettlement of the Anglo-Saxons; although the writer of that paſſage ſpeaks only, and that by the by, of what was eſtabliſhed in the reign of Edward the confeſſor. They alſo maintain, that perſons whoſe eſtates were below forty hides of land, were entirely excluded from the right of ſitting in the Wittenagemote. But the paſſage referred to makes no mention of the right of ſitting in the Wittenagemote, nor gives the leaſt hint concerning it; but only points out the extent of property which entitled a perſon to be ranked among the *proceres*. There is no reaſon to believe, either from this, or from any other ancient author, that, even in the latter part of the Anglo-Saxon government, the proprietors of ſuch great eſtates were the only members of the national aſſembly; though it is, no doubt, highly probable, that they would be more apt, than perſons of a lower ſtation, to give a punctual attendance upon its meetings.

The

The ſuperior dignity, however, enjoyed, in the reign of Edward the confeſſor, by ſuch of the nobility as were poſſeſſed of a certain extent of property, is the more worthy of attention, as it became ſtill more remarkable after the Norman conqueſt, and laid the foundation of that noted diſtinction between the *greater* and *ſmaller* barons, which was productive of important changes in the conſtitution.

As the Wittenagemote was diminiſhed by the reduction of many allodial proprietors into a ſtate of vaſſalage; it may be queſtioned whether it did not, on the other hand, receive a gradual ſupply of new members, by the advancement of the *churles*, who, in conſequence of the law of king Athelſtane, were, upon the acquiſition of five hides of land, admitted to the privileges of a thane. Concerning this point the following obſervations will occur. 1ſt. That though many of the peaſants appear, in the latter periods of the Anglo-Saxon government, to have become free, and even opulent, it is probable that they held their poſſeſſions upon the footing of vaſſalage, rather than of allodial property; in conſequence of which, they could only be ranked, from the

law

law above-mentioned, among the *leſſer thanes*, who had no right of ſitting in the Wittenagemote: 2dly, Suppoſing that any of theſe churles acquired allodial eſtates, and that they were ſtrictly entitled to a voice in the Wittenagemote; yet, about the time when this privilege was beſtowed, a much greater property than five hides of land, the quantity ſpecified in the law of king Athelſtane, was required for giving the proprietor any weight or conſideration in that aſſembly, or for making his attendance upon it a deſirable object. This was a privilege, therefore, which they would be more apt to decline from its inconveniencies, than to exerciſe, or to boaſt of, on account of its advantages.

It may alſo be a queſtion, whether thoſe merchants who performed three voyages into a foreign country, and who, by another law of the ſame prince, are ſaid to have obtained the rights of a *thane*, were admitted into the Wittenagemote. But, as theſe mercantile adventurers were not required to poſſeſs any eſtate, real or perſonal, it is not reaſonable to ſuppoſe that they could be allowed to participate, with the ancient nobility, in the delibe-

ration,

rations of the ſupreme national council. It has already been obſerved, that by the privileges of a thane, beſtowed as an encouragement to a certain degree of enterprize in trade, were probably underſtood thoſe of a *leſſer thane*, or vaſſal; who, though not a member of the Wittenagemote, was of a condition greatly ſuperior to that of the original peaſants and mechanics.

As it does not appear that individuals among the merchants had, independent of any landed eſtate, the privilege of ſitting in the Wittenagemote; ſo there is no evidence that, collectively, the trading intereſt were, even in the latter part of the Anglo-Saxon hiſtory, entitled to ſend repreſentatives to that aſſembly. Of this we may be ſatisfied from the particulars, relative to the conſtitution of the national council, which have been formerly mentioned. The facts which were then adduced, in order to ſhew that in the Saxon Wittenagemote there were no repreſentatives, either from towns, or from the ſmall proprietors of land, appear concluſive with regard to the whole period of the Engliſh government before the Norman conqueſt. If the original

original conſtitution of that aſſembly admitted of no repreſentatives from either of thoſe two claſſes of men, it muſt be ſuppoſed, that the ſubſequent introduction of them, more eſpecially if it had happened near the end of the Saxon period, when hiſtorical events are better aſcertained, would have excited the attention of ſome hiſtorian or other, and have been thought worthy of tranſmiſſion to future ages. But upon this point, of ſo much importance in the political ſyſtem, and ſo unlikely to paſs without notice, the later as well as the early Saxon hiſtorians are entirely ſilent.

The advancement of arts and manufactures, towards the end of the Saxon line, was, indeed, ſo conſiderable, as to have enlarged particular towns, and to have exempted the inhabitants from thoſe precarious duties and ſervices to which they had anciently been ſubjected. They were permitted to form *ſocieties*, or *gilds*, for the benefit of their trade; which appear to have at length ſuggeſted the practice of incorporating the whole of a town with particular privileges and regulations*. By a ſeries of progreſſive improvements, the trading people were thus gradually prepared

* Madox firma burgi.

and qualified for that political conſideration which they afterwards acquired by the eſtabliſhment of repreſentatives in the national council. But the acquiſition of this important privilege was the work of a later period, when they roſe to a higher pitch of opulence and independence.

The original meetings of the Wittenagemote in England, as well as thoſe of the national council, in moſt of the kingdoms upon the neighbouring continent, appear, as was formerly obſerved, to have been held regularly at two ſeaſons of the year; at the end of ſpring, for deliberating upon the military operations of the ſummer, and at the beginning of autumn, for dividing the fruit of thoſe depredations. The ſame times of meeting were, for ſimilar reaſons, obſerved, in the courts belonging to the ſeveral ſhires and baronies of the kingdom. But as, in England, from her inſular ſituation, military enterprizes againſt a foreign enemy were leſs regular than upon the continent of Europe, thoſe meetings fell ſoon into diſuſe; and as, on certain great feſtivals, the king was accuſtomed to appear, with great pomp and ſolemnity, among his nobles; it was found convenient, on thoſe occaſions,

caſions, to call the Wittenagemote. Hence the meetings of that council came to be held uniformly at three different ſeaſons; at Chriſtmas, at Eaſter, and at Whitſuntide.

The increaſe of the national buſineſs, particularly with reſpect to the diſtribution of juſtice, a conſequence of the gradual progreſs of authority in the public, made it neceſſary that the Wittenagemote ſhould be held more frequently than in former times; and therefore, in any extraordinary exigence, which aroſe between the different feſtivals above mentioned, a particular meeting of that council was called by the king. Thus there came to be two ſorts of Wittenagemote; the one held by cuſtom; and at three ſtated periods; the other called occaſionally, by a ſpecial ſummons from the king*. Both were compoſed of the ſame perſons, if they chose to attend; but commonly a much leſs regular attendance was given in the latter than in the former. At the occaſional meetings of the great council, ſuch of the nobility as lived at a diſtance were ſeldom at the trouble of appearing; and the buſineſs, of courſe, devolved upon thoſe mem-

* The former were called *courts de more*, being founded upon immemorial cuſtom.

bers who happened to be in the king's retinue, and who might be ſaid to compoſe his privy-council.

For this reaſon, the occaſional meetings of the Wittenagemote uſually confined themſelves to matters of leſs importance than were diſcuſſed in the old cuſtomary meetings. The chief employment of the former was the hearing of appeals from inferior courts: but legiſlation, and other weighty tranſactions, were generally reſerved to the latter.

If, however, it was found neceſſary, in the interval between the three great feſtivals, to deliberate upon public buſineſs of importance, the king iſſued an extraordinary ſummons to his nobles; in which he expreſsly required their attendance, and ſpecified the cauſe of their meeting*.

It may here be proper to remark, that the ſmaller occaſional meetings of the Wittenagemote appear to have ſuggeſted the idea of the *aula regis*; a ſeparate court, which, after the Norman conqueſt, was formed out of parliament for the ſole purpoſe of deciding law-ſuits.

As the occurrences which demanded the immediate interpoſition of the Wittenagemote could

* Gurdon's History of the high court of Parliament.

could not be foreſeen, the king was led to determine the particular caſes in which the deliberation of that aſſembly was requiſite; and in the exerciſe of this prerogative, he was originally under no reſtraint. The powers exerciſed by the crown ſeem, at firſt, to have been all diſcretionary; and to have remained without limitation, until experience had ſhewn the danger of their being abuſed.

We ſhall afterwards have occaſion to obſerve, that, under the princes of the Norman and Plantagenet race, the ancient and regular meetings of the national council were more and more diſregarded, and at length entirely diſuſed; in conſequence of which the whole parliamentary buſineſs came to be tranſacted in extraordinary meetings, which were called at the pleaſure of the ſovereign. The attempts to limit this important branch of the royal prerogative will be the ſubject of future diſcuſſion.

Concluſion of the Saxon Period.

SUCH appear to be the outlines of the Engliſh government under the adminiſtration of the Anglo-Saxon princes. To the ſubjects of Britain, who conſider the nature of their preſent

preſent conſtitution, and compare it with that of moſt of the nations upon the neighbouring continent, it ſeems natural to indulge a prepoſſeſſion, that circumſtances peculiarly fortunate muſt have concurred in laying the foundation of ſo excellent a fabric. It ſeems natural to imagine, that the government of the Anglo-Saxons muſt have contained a proportion of liberty, as much greater than that of the neighbouring nations, as our conſtitution is at preſent more free than the other European governments.

When we examine, at the ſame time, the ſtate of our country, in that remote age; the uniform juriſdiction and authority poſſeſſed by every allodial proprietor; the diviſion of the country into various diſtricts, ſubordinate one to another; the perfect correſpondence between the civil and eccleſiaſtical diviſions; the ſimilarity in the powers exerciſed by the meetings of the tything, the hundred, and the ſhire, in their reſpective territories, and thoſe of the Wittenagemote over the whole kingdom; the analogy between the office of the tythingman, the hundreder, and the earl, in their inferior departments, and that of the ſovereign in his more exalted ſtation; when,

I ſay,

I ſay, we examine theſe, and other particulars relating to the Anglo-Saxon government, in which we may diſcover ſo much order and regularity, ſuch a variety of regulations, nicely adjuſted to one another, and calculated for the moſt beneficial purpoſes; it is natural to ſuppoſe, that the whole has originated in much contrivance and foreſight; and is the reſult of deep laid ſchemes of policy.

In both of theſe concluſions, however, we ſhould undoubtedly be miſtaken. When we look round and examine the ſtate of the other European kingdoms about the ſame period; and when we obſerve, in each of them, the cloſe and minute reſemblance of its political ſyſtem to that of England, how little ſoever the apparent intercourſe of the inhabitants; we feel ourſelves under the neceſſity of abandoning our former ſuppoſition, and of acknowledging that the regulations eſtabliſhed in all of theſe countries proceeded from no artificial or complicated plans of legiſlation; but were ſuch as occurred ſucceſſively to the people, for the ſupply of their immediate wants, and the removal of incidental inconveniencies; in a word, every where, a kind of natural growth, produced by the

the peculiar ſituation and circumſtances of the ſociety.

Neither was the Anglo-Saxon government calculated, in any peculiar manner, to ſecure the liberty and the natural rights of mankind. The ſovereign, indeed, in the long period during which this government ſubſiſted, and through all the ſucceſſive alterations which it underwent, was at no time inveſted with abſolute power. The ſupreme authority in the ſtate was originally poſſeſſed by a numerous body of landed proprietors; but the reſt of the community were either ſlaves, or tenants at the will of their maſter. The number of thoſe who enjoyed a ſhare in the government was afterwards greatly diminiſhed: at the ſame time that, upon this advancement of the ariſtocracy, the lower part of the inhabitants became ſomewhat more free and independent. The encreaſe of political power in men of a ſuperior claſs was thus compenſated by ſome little extenſion of privileges in the great body of the people.

END OF VOL. I.

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